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Ontario

Standing Committee on Regulations and Private Bills

First Report 1988

1st Session 34th Parliament
37 Elizabeth II

STANDING COMMITTEE
ON REGULATIONS AND PRIVATE BILLS

FIRST REPORT
1988

1st Session, 34th Parliament
37 Elizabeth II



The Honourable Hugh Edighoffer, M.P.P.
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on Regulations and Private Bills has the honour to present its First Report for the First Session of the Thirty-fourth Parliament and commends it to the House.

A handwritten signature in cursive script that reads "David Fleet".

David G. Fleet, M.P.P.
Chairman

Queen's Park
April, 1988

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I INTRODUCTION

The content of this Report was originally considered by your Committee early in 1987. The membership of the Committee at that time consisted of Robert Callahan, Chairman, Ray Haggerty, Vice-Chairman, Brian Charlton, Joseph Cordiano, Sam Cureatz, Rick Ferraro, Mickey Hennessy, Bob McKessock, Karl Morin-Strom, Yuri Shymko and Douglas Wiseman. The present membership of your Committee has endeavoured to reflect the views of your Committee as constituted early in 1987.

Your Committee presents this Report in accordance with its permanent reference, section 12 of the Regulations Act, R.S.O. 1980, chapter 446. (See Appendix 'A' hereto.) Section 12 provides that your Committee shall consider the scope of, and the authority for, all regulations, but shall not consider the underlying policies or legislative objectives.

The Terms of Reference of your Committee are set out in Appendix 'B' hereto. They are technical guidelines for the legal propriety of regulations. Comments on the true merits of individual regulations are beyond the present duties of your Committee.

In this Report, your Committee reports its observations, opinions and recommendations on all the regulations which were filed in the Office of the Registrar of Regulations in the year 1986. Your Committee also reports briefly on recent developments relating to the regulatory process in Canada (federal) and Quebec.

* * *

II RECENT DEVELOPMENTS RELATING TO THE REGULATORY PROCESS

Your Committee observes that there has been a trend towards greater participation by members of the public in the regulatory processes in Quebec and in Canada (federal). As well, in both these jurisdictions parliamentarians have been given greater powers through the ability to disallow regulations. Your Committee intends to monitor these developments so that, in future reports, it will be able to make recommendations for the regulatory process in the Province of Ontario.

A Increased Public Participation in the Regulatory Process

Effective September 1986, in both Quebec and Canada, it is required that regulations be published in draft form and an opportunity be given to the public to comment thereon.

The new Regulations Act of Quebec, which came into force on September 1, 1986, provides for the publication of all proposed regulations in the official gazette of Quebec. Proposed regulations are to be accompanied by a notice stating the period within which interested persons may transmit their comments to a person designated in the notice. Subject to certain exceptions, the proposed regulation may not be made or submitted for approval (where approval is necessary) before the expiry of forty-five days after its publication, or until the period for public comment has passed, whichever is longer.

The Canadian government began making developments in the field of advance notice and comment in May 1983 with the introduction of its Regulatory Agenda program. Major departments and regulatory agencies were required to publish regulatory agenda on a semi-annual basis. This provided advance notice to the public and private sectors of contemplated regulatory initiatives or changes.

In 1986, the federal government announced its regulatory reform strategy which includes a regulatory process action plan. Under this policy the Regulatory Agenda is published once annually each November, with a semi-annual update. It is to ensure "early notice" of all possible regulatory "initiatives" for the coming year. The policy provides that no regulatory initiatives will come into effect sooner than sixty days after early notice.

In addition, since September 1, 1986, a draft of all new or amending regulations has been required to be "pre-

published" at least thirty days prior to their coming into effect. The following information is to be disclosed in the explanatory notes published with the draft and final regulations:

- (a) the policy objective of the regulation,
- (b) the need for the regulation,
- (c) the content of the regulation,
- (d) changes from the existing regulation,
- (e) the timing of consultation and implementation of the regulation,
- (f) results of previous consultation,
- (g) a summary of the impact analysis for the regulation, and
- (h) identification of contact persons.

Any draft regulations which are considerably amended following "pre-publication" or which have not been "approved" within eighteen months after "pre-publication" must be republished.

Item (g) above refers to an "impact analysis". Under the new regulatory policy of the federal government, a regulatory impact analysis statement (called "RIAS") is to be prepared for all regulatory proposals. This statement is to accompany both the draft regulation as it is submitted for Ministerial approval, and the draft and the final regulation when they are published. The RIAS is to provide basic information on the objectives of the regulatory proposal, alternatives to regulations which were considered, consultation which has taken place and the likely social and economic impact of the proposal.

Impact analysis per se had already been carried out by the Canadian government for major regulations in certain fields. The RIAS program is new insofar as it applies to all regulations and is more fully supported and enforced.

Your Committee intends to monitor developments in both these jurisdictions in order to benefit from their experiences and to be in a position to make recommendations for the regulatory process in Ontario. Of particular interest and concern is the extent to which mechanisms may exist to exempt urgent regulations from the requirement for advance notice and comment, so as to avoid damaging the flexibility of the regulatory process.

B Increased Role for Parliamentarians

Your Committee observes that, in Canada and Quebec, provisions have been made to enable Members of Parliament to disallow regulations by a special motion.

The House of Commons amended its Standing Orders with respect to the Standing Joint Committee on Regulations and Other Statutory Instruments. This amendment provided the power to recommend the disallowance of delegated legislation.

Specifically, the amendment empowers the Joint Committee to make a report to the House containing a proposed motion to rescind a specified regulation or other statutory instrument. Immediately upon receipt and tabling of the report, the Clerk of the House causes a notice of motion for concurrence in the report to be placed on the Notice Paper. If the report is concurred in by the House, the proposed motion to rescind is considered to be an Order of the House to the Ministry concerned to rescind the regulation or statutory instrument in question. Further, if the motion for concurrence in the report is not disposed of by the House within fifteen days after it is made, it shall be deemed to have been moved and adopted by the House. Thus the amended Standing Orders give the Joint Committee the ability to have a piece of delegated legislation brought before the House quickly for review.

Your Committee also observes that, under section 21 of the new Regulations Act of Quebec, the National Assembly may, in accordance with its Standing Orders, vote the disallowance of any regulation. Such disallowance has the same effect as the repeal of the regulation. It is interesting to note that under the Quebec Regulations Act there is no provision for the scrutiny of regulations by a Parliamentary Committee. Proposed regulations are submitted for examination to the Minister of Justice or a person designated by him or her (presumably one of the counsel in a central drafting office).

Your Committee will continue to monitor the use of the motion for disallowance in Canada, Quebec and in other jurisdictions where the procedure exists.

III STATISTICS FOR THE CALENDAR YEAR 1986

During the calendar year 1986 there were 763 regulations filed with the Registrar of Regulations pursuant to the Regulations Act. This total represents an increase of 8.5 percent over 1985. The following table presents the totals for the past ten years:

<u>Year</u>	<u>Regulations</u>
1977	975
1978	1,007
1979	962
1980	1,141
1981	884
1982	837
1983	815
1984	840
1985	703
1986	763

The 1986 regulations occupy 2,946 double-column pages in The Ontario Gazette. This figure is almost 71 percent higher than the comparable figure for 1985. Schedules of drugs under the Ontario Drug Benefit Act, 1986 and the Prescription Drug Cost Regulation Act, 1986 and schedules of benefits under the Health Insurance Act have contributed to the increase. The table below enables comparisons to be made with other years:

<u>Year</u>	<u>Pages</u>
1977	1,797
1978	1,965
1979	2,568
1980	2,138
1981	1,952
1982	2,021
1983	2,245
1984	3,667
1985	1,726
1986	2,946

The following table lists the Acts under the authority of which five or more regulations were filed during 1986:

<u>NAME OF ACT</u>	<u>NUMBER OF REGULATIONS</u>
Administration of Justice Act	7
Apprenticeship and Tradesmen's Qualification Act	6
Assessment Act	7
Charitable Institutions Act	6
Conservation Authorities Act	6
Courts of Justice Act, 1984	11
Crop Insurance Act (Ontario)	17
Education Act	20
Environmental Assessment Act	36
Family Benefits Act	10
Farm Income Stabilization Act	5
Farm Products Marketing Act	12
Forest Fires Prevention Act	16
Game and Fish Act	34
General Welfare Assistance Act	12
Health Disciplines Act	7
Health Insurance Act	38
Health Protection and Promotion Act, 1983	8
Highway Traffic Act	36
Homes for the Aged and Rest Homes Act	6
Land Titles Act	5
Land Transfer Tax Act	5
Liquor Licence Act	8
Local Roads Boards Act	12
Local Services Boards Act	5
Mental Health Act	6
Milk Act	11
Municipal Boundary Negotiations Act, 1981	12
Niagara Escarpment Planning and Development Act	8
Nursing Homes Act	5
Occupational Health and Safety Act	10
Parkway Belt Planning and Development Act	31
Planning Act, 1983	119
Provincial Offences Act	5
Provincial Parks Act	7
Public Commercial Vehicles Act	7
Rental Housing Protection Act, 1986	5
Tobacco Tax Act	6

The six Acts under which the most regulations were filed are: the Planning Act, 1983 (119 regulations); the Health Insurance Act (38); the Environmental Assessment Act (36); the Highway Traffic Act (36); the Game and Fish Act (34); and the Parkway Belt Planning and Development Act (31). With the exception of the Health Insurance Act, these Acts appeared in the comparable list for 1985 although in different order. The Crop Insurance Act was the other Act in the 1985 list.

In its First Report 1986, your Committee noted the large number of regulations made under the Planning Act, 1983 and the Parkway Belt Planning and Development Act. It was pointed out that, for the most part, regulations made under these two Acts exempted specific parcels of land from zoning regulations (pp. 6-7).

More detailed statistical information may be found in the "Table of Regulations Filed under the Regulations Act to the 31st Day of December, 1986". This table was published as an addendum to The Ontario Gazette of January 24, 1987.

* * *

IV OBSERVATIONS, OPINIONS AND RECOMMENDATIONS CONCERNING PARTICULAR REGULATIONS

As in its First Report 1986, your Committee notes that only four of the nine guidelines have been transgressed by regulations filed in 1986. These guidelines are as follows:

- (2) Regulations should be in strict accord with the statute conferring of power.
- (3) Regulations should be expressed in precise and unambiguous language.
- (4) Regulations should not have retrospective effect unless clearly authorized by statute.
- (6) Regulations should not impose a fine, imprisonment or other penalty.

Although the guidelines set out for your Committee in its terms of reference are a convenient guide to examining the regulations, your Committee does not consider itself limited by these guidelines in carrying out its statutory mandate under the Regulations Act. That mandate is to examine the regulations "with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes".

In subsequent reports, your Committee intends to monitor and to report on the extent to which its recommendations have been implemented by amendments to the regulations and the Acts in question. No specific reference is made to any amendments made subsequent to the review of the regulations filed in 1986 except where Ministry counsel has brought the amendment to the attention of your Committee.

Your Committee sets out below a summary of the regulations in question. In most cases the observations, opinions and recommendations expressed only relate to a specific provision or provisions of the regulation in question.

Guideline 2 Regulations should be in strict accord with the statute conferring of power.

MINISTRY OF ENERGY

Ontario Regulation 141/86 under the
Power Corporation Act

The above regulation amends Regulation 796 of R.R.O. 1980 under the Power Corporation Act dealing with the pension and insurance plan for Ontario Hydro.

Subsections 6(1), 6(3) and 6(7)(b) of amended Regulation 796, permit a member to retire in certain circumstances "with the consent of the Corporation". Your Committee is concerned that, while there exists such a requirement for the consent of the Corporation, no guidelines are set out defining circumstances under which the consent shall or shall not be given. It appears that these provisions may allow the Corporation an improper exercise of the power (given to it under section 20(7)(e) of the Act) to prescribe the persons who may receive benefits under the pension plan. Such power can only be exercised with the approval of the Lieutenant Governor in Council.

Counsel for the Ministry has advised that Ontario Hydro concurs that amendments to these provisions are appropriate and that Ontario Hydro has been attempting to update the wording of its plan to discontinue archaic or inappropriate usages. Ministry counsel noted that subsection 6(6) of Regulation 796, as amended by this regulation, has no reference to the consent of the Corporation and thus demonstrates Ontario Hydro's intention to discontinue requirements for the consent of the Corporation in that type of situation.

Your Committee also observes that clause 1(i) of Regulation 796, as amended by this regulation, should refer to "a member who retires" rather than "a member who is retired". Ministry counsel has advised that Ontario Hydro concurs that such an amendment would be appropriate.

Your Committee recommends that the above changes be made forthwith, particularly with respect to deleting the requirement for the consent of Ontario Hydro to the retirement of its members.

MINISTRY OF COMMUNITY AND SOCIAL SERVICES

Ontario Regulation 165/86 under the
Family Benefits Act

Your Committee is of the opinion that this regulation, which amends Regulation 318 of R.R.O. 1980, contains provisions which constitute an unauthorized delegation of authority and which attempt to amend a particular section of the parent Act.

Section 2 of Ontario Regulation 165/86 amends subsections 25(1), (3) and (4) of Regulation 318. The amendment sets out a number of criteria of eligibility for the receipt of a drug benefit. One of the criteria is that the person receiving the benefit "is approved by the Minister of Health". Although section 20(m) of the Act provides that the Lieutenant Governor in Council may make regulations "prescribing standards of eligibility for benefits in addition to those mentioned" in the Act, it is your Committee's view that the requirement for approval by the Minister of Health is not a "standard of eligibility". Rather, it is a subdelegation to the Minister of Health of the power to prescribe standards of eligibility. No guidelines or criteria for obtaining the approval of the Minister of Health are set out. It is your Committee's opinion that such a subdelegation is not authorized by the Act.

Section 3 of Ontario Regulation 165/86 creates a new section 25a to Regulation 318. The addition of this section appears to be an attempt to amend section 9 of the Family Benefits Act. Section 9 of the Act provides that "a benefit shall be provided only after the receipt by the Director of an application therefor in the prescribed form". Section 25a, as added by this regulation, provides that an application for certain benefits under section 24(1) and 25(1) of Regulation 318 "to a person other than the Director shall be deemed to be an application received by the Director in accordance with section 9 of the Act". Your Committee observes that a similar deeming provision occurs in sections 24(4) and 25(3) of Regulation 318 as amended. Your Committee is unable to find any authority for these provisions which appear to go beyond the scope of the Family Benefits Act and alter the mandatory statutory scheme which requires applications for benefits to be made to the Director in the prescribed form.

The above points have been brought to the attention of Ministry counsel with a request for an explanation as to the authority for these provisions. No explanation has been provided. However, Ministry counsel has advised that, in December 1986, the Ontario Drug Benefits Act, 1986 was proclaimed in force and under that Act, the Ministry of Health now provides drug benefits to those classes of persons defined in subsection 25(1) of Regulation 318. Your Committee was further advised

that as a result Ministry counsel expect to receive instructions to revoke section 25 and to amend section 25a and expect that the necessary amendments would be included in the next "housekeeping" amendment to Regulation 318.

MINISTRY OF AGRICULTURE AND FOOD

Ontario Regulation 190/86 under the Farm Income Stabilization Act

This regulation is similar to Ontario Regulations 48/85, 285/85 and 645/85 which were commented on in your Committee's First Report 1986. The problem noted by your Committee was that the Act requires that there be an index, prescribed by the regulations, in order to calculate the stabilization price of a farm product, but no such index has been prescribed. As well, payments by the Commission are to be made at the times prescribed by the regulations, yet no such times have been prescribed.

Your Committee is pleased to report that Counsel to the Ministry has advised that amendments to the Act have been drafted which should satisfy your Committee's concerns. However, to date, no such legislation has been introduced.

MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS

Ontario Regulation 248/86 under the Amusement Devices Act, 1986

The above regulation is the general regulation under the Amusement Devices Act, 1986 and deals primarily with the go-kart industry. The regulation has subsequently been revoked and replaced by Ontario Regulation 342/87. The following comments relate to Ontario Regulation 248/86.

Your Committee has a concern with a particular provision in section 10 of the regulation which prescribes the fees payable under the Act and the regulation. The concern is that one of the items provides for expenses incurred by an inspector in addition to a fee. Paragraphs 10(1)12 and 10(1)13 provide that the person being inspected must pay "all reasonable travelling, meal and accommodation expenses necessarily incurred by the inspector in connection with the inspection" where an inspection has been unduly delayed or prolonged by reason of the licensee failing to comply with certain requirements of the Act or where an inspection has been specially arranged to suit a licensee's schedule.

The problem your Committee wishes to report is that section 18(1)(m) of the Act only provides for making regulations "prescribing fees". Your Committee

understands the ordinary meaning of "fee" to be a charge for a particular act or service, but not to include expenses. Your Committee notes that in similar legislation, namely the Elevating Devices Act, this point is covered by section 31(o) of that Act which authorizes the Lieutenant Governor in Council to make regulations "prescribing the circumstances under which expenses or special fees, or both, are to be paid and prescribing the special fees and designating the persons by whom such expenses or fees, or both, are to be paid."

Your Committee feels that without such a similar provision in the Amusement Devices Act, 1986 it is doubtful that there is statutory authority for charging these expenses.

Counsel for the Ministry has advised that it is the position of the Elevating Devices Branch that the amounts referred to in paragraphs 12 and 13 of subsection 10(1) of the Amusement Devices Act, 1986 are in fact "fees".

Your Committee disagrees with the position of the Elevating Devices Branch and recommends that the regulation be amended to delete the provisions charging these expense items since there does not appear to be authority in the Amusement Devices Act, 1986.

MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS

Ontario Regulation 382/86 under the
Commodity Futures Act

The above regulation, which amends Regulation 114 of R.R.O. 1980, the general regulation made under the Commodity Futures Act, deals primarily with fees under the Act.

Although most of the fees prescribed appear to be in order, your Committee is concerned that there is no authority for the provision in item 10 of Schedule 1 prescribing a fee of \$50.00 plus 50 cents per page for certification of documents to the Registrar of the Supreme Court of Ontario in an appeal from a decision of the Ontario Securities Commission to the Divisional Court. Your Committee notes that no fee is charged for this service in the comparable provisions of the regulations under the Securities Act.

Your Committee is pleased to report that after bringing this matter to the attention of the Ministry, the Ontario Securities Commission has advised that it proposes to

amend item 10 of Schedule 1 of the regulation in due course so that it is consistent with the regulations under the Securities Act.

MINISTRY OF REVENUE

Ontario Regulation 410/86 under the Small Business Development Corporations Act

The above regulation amends the provisions of Regulation 915 of R.R.O. 1980, the general regulation under the Small Business Development Corporations Act. Your Committee's observations relate to subsection 8(5) of this general regulation as amended. The effect of this subsection is to further define the expression "small business" by imposing certain conditions or restrictions on what can or cannot be a small business for the purposes of the Act, thereby amending the Act by regulation. Your Committee has been unable to find any authority for so doing.

Your Committee is pleased to report that, after having drawn this matter to the attention of Counsel to the Ministry, Counsel has advised that a suggestion will be made to the Ministry to amend subsection 8(5).

MINISTRY OF REVENUE

Ontario Regulation 412/86 under the Provincial Land Tax Act

The above regulation amends Ontario Regulation 303/83 made under the Provincial Land Tax Act. It prescribes the form of caution which may be filed under section 33(1) of the Act.

Your Committee observes that Ontario Regulation 412/86 was made by the Lieutenant Governor in Council. This is clearly an error, since section 38(2) of the Act authorizes the Minister (not the Lieutenant Governor in Council) to make regulations prescribing forms.

The Acting Director of the Ministry's Legal Services Branch has confirmed that the regulation should have been made by the Minister. However, the Acting Director expressed the opinion that the regulation is valid since the Minister of Revenue was part of the Executive Council which advised and concurred in the making of the regulation by the Lieutenant Governor, and the Minister signed the recommendation that the regulation be made.

Your Committee is unable to share this opinion because the regulation was not made by the person who should have

made it. Your Committee observes that the form prescribed by the regulation is one that affects the public generally since it may be registered against title to lands throughout the Province. In these circumstances, and considering that an error has clearly been made, your Committee recommends that the error be corrected at the earliest possible opportunity to remove any doubt as to the validity of the regulation.

Guideline 3: Regulations should be expressed in precise and unambiguous language.

The transgressions which your Committee has found under this guideline appear mainly to be typographical or clerical errors, frequently with respect to some section reference in the regulation itself. Where such errors lead to ambiguity, your Committee has brought the error to the attention of the Ministry concerned. Except as noted below, the Ministries have acknowledged the error and have advised that it will be corrected on the next revision to the regulation. The particular regulations concerned are set out briefly below identifying the incorrect reference and what the correct reference should be.

MINISTRY OF THE ATTORNEY GENERAL

Ontario Regulation 93/86 under the
Courts of Justice Act, 1984

The above regulation makes certain amendments to Regulation 939 of R.R.O. 1980. The reference in section 1 of the regulation to section "34(4) of the Family Law Act, 1986" should be to section 34(3) of that Act.

MINISTRY OF TRANSPORTATION AND COMMUNICATIONS

Ontario Regulation 168/86 under the
Highway Traffic Act

The above regulation makes certain amendments to Regulation 486 of R.R.O. 1980 which deals with signs. The reference in section 51 of the amended regulation to subsection 20a(6) should be to subsection 20a(7).

MINISTRY OF AGRICULTURE AND FOOD

Ontario Regulation 195/86 under the
Farm Products Marketing Act

The above regulation makes certain amendments to Regulation 371 of R.R.O. 1980 dealing with the marketing of potatoes. The reference in section 1(2) and 1(3) of the amending regulation to subsection (1) should be to subsection (1a).

MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS

Ontario Regulation 384/86 under the
Vital Statistics Act

The above regulation makes various amendments to Regulation 942 of R.R.O. 1980, the general regulation under the Vital Statistics Act.

Section 10a(3) of the amended regulation incorrectly refers to clause 10(5)(a) rather than to 10a(5)(a). As well, section 46a(3) should refer to form 40 instead of form 39, and section 46a(4) should refer to form 39 instead of 40.

With respect to Form 2, Box 21 provides "check here if the name selected is determined in accordance with the child's Cultural, Ethnic or Religious Heritage". The reference should be specifically to the child's surname because section 7(5) of the Act states:

"Where the person who certifies a child's birth indicates in the statement that he or she wishes to give the child a surname that is determined, not under subsection (3) but in accordance with the child's Cultural, Ethnic, or Religious Heritage, the child may be given that surname if the Registrar General approves."
(Emphasis added.)

As well, Form 2 directs the reader to refer to instruction E on the reverse side. The reverse side of the form ought to have been published in the regulation but was not.

MINISTRY OF NATURAL RESOURCES

Ontario Regulation 526/86 under the
Game and Fish Act

The above regulation deals with fishing licences under the Game and Fish Act. The third line in the note to form 22 incorrectly refers to Regulation 15/85. The reference should be to Regulation 526/86.

MINISTRY OF EDUCATION

Ontario Regulation 380/86 under the Education Act

The above regulation makes various amendments to regulation 271 of R.R.O. 1980 under the Education Act. Section 36(3) of the amended regulation incorrectly refers to "subsections (1) and (3)" in the second and third lines. The reference should be to subsections (1) and (4).

MINISTRY OF HOUSING

Ontario Regulation 605/86 under the Rental Housing Protection Act, 1986

The above regulation amends Ontario Regulation 434/86. In the third line of section 18 of Ontario Regulation 434/86, as amended, the reference to clause 4(12)(d) is incorrect and should be to clause 4(1)(d).

MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS

Ontario Regulation 248/86 under the Amusement Devices Act, 1986

This is the general regulation under the Act. As noted above, the regulation was repealed and replaced by Ontario Regulation 342/87. The following comments concern Ontario Regulation 248/86.

The reference in section 19 of the regulation should be to "kart" rather than to "go-kart". Both are defined terms in the regulation and have different meanings.

Section 32(2) of the regulation refers to section 22. This reference, which is in connection with barriers, should be to section 31 of the regulation.

MINISTRY OF THE ENVIRONMENT

Ontario Regulation 496/86 under the Environmental Assessment Act

The order which is the subject of this regulation extends the time for the connection of a water treatment plant to a sewage works. The extension of time is worded in the following manner: "Extending the time provided for the connection of the plant to a sewage works from that provided for in Exemption Order MOE-17 which was approved by O.C. No. 2801/79 which was published in The Ontario Gazette on the 10th day of November, 1979".

The cross reference to the publication of the Order in Council in The Ontario Gazette is in error in so far as the Order in Council was not published in The Ontario Gazette. Ministry counsel has confirmed this and has advised that the Order in Council was published in a ministry periodical. Ministry counsel has also provided your Committee with a copy of the Order in Council in question.

MINISTRY OF COMMUNITY AND SOCIAL SERVICES

Ontario Regulation 396/86 under the Family Benefits Act

The above regulation amends various provisions of Regulation 318 of R.R.O. 1980, the general regulation under the Family Benefits Act. Subparagraph iii of paragraph 1 of subsection 13(2) of the amended regulation refers to "subparagraphs i, ii and iii" in the ninth and tenth lines. Ministry counsel has confirmed that this is in error and the reference should simply have been to "subparagraphs i and ii". Ministry counsel further advises that this has been corrected by a subsequent amendment found in section 1 of Ontario Regulation 169/87.

MINISTRY OF REVENUE

Ontario Regulation 763/86 under the Corporations Tax Act

The above regulation makes various amendments to Regulation 191 of R.R.O. 1980 under the Corporations Tax Act. Section 17(1) of Ontario Regulation 763/86 incorrectly refers to clause 101(1)(ja) when the reference should have been to clause 101(1)(ia). As well, section 17(2) of Ontario Regulation 763/86 incorrectly refers to clause 101(1)(jb) when it should have referred to clause 101(1)(ja). Ministry counsel has confirmed that these were errors and that Ontario Regulation 126/87 remade subsections 17(1) and (2), retroactive to the date of filing of Ontario Regulation 763/86, to correct the references.

MINISTRY OF HEALTH

Ontario Regulation 734/86 under the Mental Health Act

The above regulation amends Regulation 609 of R.R.O. 1980 under the Mental Health Act. It deals with the application of the Mental Health Act to psychiatric facilities and also revises a number of forms as a result

of amendments to that Act made by the Equality Rights Statute Law Act, S.O. 1986, chapter 64.

The reference to "clause 20(3)(b)" in the fourth line of section 7(1) of Regulation 609, as amended, should have been to "section 20". As well, subsection 30a(1) should have been added in the fifth line of section 7(1) in addition to subsections 30a(1a), (1b) and (2).

The reference to "subsection 8a(1)" in section 16(25) of Regulation 609, as amended, is not correct. The reference should be to "subsection 8a(2)" or to both "subsections 8a(1) and (2)".

Ministry Counsel has advised that the heading of Form 26 added by Ontario Regulation 734/86 should refer to subsection 8a(1) of the Act in addition to subsection 8a(2). As well, Form 26 is not accurate in stating that "Under section 8a(2) of the Act, the review board must conduct an inquiry..." since the requirement for the review board to conduct an inquiry arises under section 33b(1) of the Act and not directly under section 8a(2).

The reference to "(section 29(14))" beside the words "Consent to the disclosure of his or her clinical records" is in error. Counsel for the Ministry has advised that the reference should have been to section 29a(14).

The reference in Item 6 of Form 1 of Regulation 609, as amended, should have been to "Item 4" rather than to "Item 5". As well, the word "by" in the first line should have been "my".

Guideline 4: Regulations should not have retrospective effect unless clearly authorized by statute.

Unless clearly authorized by statute, regulations which are deemed to come into force on a date prior to filing with the Registrar of Regulations transgress the above guideline. Your Committee is pleased to note that the number of such regulations has decreased from 1985. As well, it appears that an effort is being made by Ministries to see that the guideline is not contravened. The following regulations have been found to conflict with the guideline.

MINISTRY OF MUNICIPAL AFFAIRS

Ontario Regulation 72/86 under the Planning Act, 1983

The above regulation, made under section 4 of the Act, provides, under section 50 of the Condominium Act, for a delegation of the authority of the Minister to the Council for the Regional Municipality of Sudbury. Section 5 of the regulation provides that it comes into force on February 1, 1986. Your Committee observes that this is a date not only prior to the filing of the regulation on February 12, 1986, but before its making on February 4, 1986.

Counsel to the Ministry has advised that, through an oversight, the effective date stated in section 5 of the regulation was not changed when a delay in processing the regulation was experienced. Counsel has further advised that the Ministry's procedures have been altered in order to eliminate this problem.

MINISTRY OF THE ATTORNEY GENERAL

Ontario Regulations 323/86 and 324/86 under the Courts of Justice Act, 1984

The above regulations amend various provisions in the Rules of Civil Procedure and the Rules of the Unified Family Court, respectively. They deal primarily with procedures and forms necessary to implement the new Divorce Act.

The regulations were approved on June 2, 1986 by the Lieutenant Governor in Council and filed on June 2, 1986. However, they are expressed to come into force on the first day of June, 1986 (the date that the new federal Divorce Act was proclaimed in force) and therefore are retroactive by one day.

Counsel to the Ministry has advised that it was not possible to arrange for the approval of the regulations by the Lieutenant Governor in Council until June 2, 1986. Counsel added that as June 1, 1986 was a Sunday, the approval and filing of the regulations on June 2, 1986 took place on the first day on which court offices and the courts themselves were open for business after June 1.

THE CABINET OFFICE

Ontario Regulation 417/86 under the Executive Council Act

The above regulation is an order in council transferring the administration of, and all powers and duties under or in relation to, certain enumerated Acts of the Legislature of Ontario to the Minister of Financial Institutions pursuant to subsections 2(1) and 5(1) of the Executive Council Act.

The order in council, made on March 26, 1986 and filed on July 17, 1986, is expressed to be effective on and after the first day of April, 1986, and is thus retroactive.

The Secretary of the Cabinet has advised that, until mid-July, 1986, the question of whether it was necessary to file such orders in council was unclear. In the past such orders in council had been filed as a matter of public interest and information. After correspondence between your Committee's Counsel, the Cabinet Office and the Registrar of Regulations the position was clarified. As a result, the regulation was filed promptly after the necessity for filing was made clear. The Secretary of the Cabinet has further advised that, in future, every effort will be made to prevent retroactivity in the filing of such orders as regulations.

MINISTRY OF THE ATTORNEY GENERAL

Ontario Regulation 458/86 under the Children's Law Reform Act

This regulation amends Regulation 99 of R.R.O. 1980 under the Children's Law Reform Act by revising and adding certain forms in conjunction with amendments to the Act made by the Children's Law Reform Amendment Act, 1986.

The regulation was made on July 31, 1986 and filed on August 1, 1986, and thus in the normal course would take effect on and after August 1, 1986. However, the Children's Law Reform Amendment Act, 1986 was not proclaimed in force until September 1, 1986. Counsel for the Ministry has advised that it was intended that the regulation be effective on proclamation of the Children's Law Reform Amendment Act, 1986, and he expressed the view that under section 5 of the Interpretation Act, R.S.O. 1980, chapter 219 the regulation would only take effect once the amendment to the Act was proclaimed in force, namely September 1, 1986.

Your Committee is not persuaded that section 5 of the Interpretation Act is applicable and observes that, to avoid any ambiguity as to when the regulation was to take

effect, the regulation could have been expressed to come into force on September 1, 1986 or, if it was not known when the Children's Law Reform Amendment Act, 1986 would come into force, simply on the day that such Act would come into force.

Your Committee has been informed by the Ministry's Counsel that no persons would have been prejudiced by the forms having been amended by the regulation one month prior to the amending Act being proclaimed in force.

MINISTRY OF HEALTH

Ontario Regulation 660/86 under the
Health Protection and Promotion Act, 1983

The above regulation amends the table to Ontario Regulation 594/85 dealing with rabies immunization. The amendment is retroactive by a period of six days as it was filed on November 7, 1986. The effect of the amendment is that dogs and cats in the Middlesex-London District Health Unit must be immunized against rabies on or after November 1, 1986. There is no authority in the Health Protection and Promotion Act, 1983 for making regulations retroactively.

Ministry counsel has advised that the Board of Health of the Middlesex-London District Health Unit requested the amendment on October 3, 1986 and the regulation amendment could not be processed prior to November 6, 1986. Ministry counsel further advises that the Board of Health did not commence to enforce the regulation prior to November 7, 1986.

MINISTRY OF MUNICIPAL AFFAIRS

Ontario Regulation 661/86 under the
Planning Act, 1983

By the above regulation the Minister of Municipal Affairs has delegated certain of his authority under the Planning Act, 1983 to the Council of the Regional Municipality of Hamilton-Wentworth, pursuant to section 4 of the Planning Act, 1983.

The regulation, made on November 3, 1986 and filed on November 7, 1986 is expressed to come into force on the 3rd day of November 1986, and is thus retroactive.

Counsel to the Ministry has advised that no official plan amendments were approved by the Council of the Regional Municipality of Hamilton-Wentworth on or before November 7, 1986 so that there would not appear to be any procedures carried out under the regulation that could be

called into question because of the filing subsequent to the stated date of coming into force. Ministry counsel has also stated that they have constantly advised planning staff in the Ministry of the importance of registration prior to the proposed effective date of all orders but situations have arisen where the Minister has not been available for signing prior to the proposed date of coming into force and counsel has then been requested to file the order on a subsequent date.

Guideline 6 Regulations should not impose a fine, imprisonment or other penalty.

Unless there is statutory authority for so doing, regulations should not impose a fine, imprisonment or other penalty. Your Committee has not observed any regulations which provide for imprisonment or expressly provide for a fine. However, there are a number of regulations in which a monetary amount is imposed as a deterrent against doing, or failing to do something, such as the imposition of a late filing fee. The regulations which your Committee wishes to report upon in this regard are set out below.

MINISTRY OF FINANCIAL INSTITUTIONS

**Ontario Regulation 146/86 under the
Loan and Trust Corporations Act**

The above regulation prescribes the schedule of fees under the Loan and Trust Corporations Act.

Under Item 19(i) of the regulation a daily fee of \$20.00 is imposed for an extension of time for filing the annual statement and any other documents required under the Act. Item 19(ii) imposes the same \$20.00 daily fee for the late filing of an application for renewal of registration.

Your Committee is concerned that these daily fees operate as a penalty. There is already a provision in the Act, section 196(6), which provides that any corporation that does not file its annual statement as required is liable to a penalty of \$50.00 for each day of default, not to exceed \$1,000.00. Your Committee observes that there is no similar \$1,000.00 limit in the regulation. As well, by adding the \$20.00 fee imposed by Item 19(i) of the regulation to the \$50.00 fee imposed by section 196(6) of the Act, the total "penalty" payable is \$70.00 per day.

Your Committee understands that late filing fees are a method to cover administrative costs. However, while the fees increase on a daily basis, it is difficult to see

how the administrative costs associated with any particular late filing would increase on a daily basis.

Your Committee is pleased to report that Counsel to the Ministry has advised that the Ministry will be changing the current Item 19(i) from a per diem rate to a fixed fee and will be repealing Item 19(ii).

MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS

Ontario Regulation 248/86 under the Amusement Devices Act, 1986

The above regulation is the general regulation made under the Amusement Devices Act, 1986. As noted above, the regulation was repealed and replaced by Ontario Regulation 342/87. The following comments concern Ontario Regulation 248/86.

Your Committee observes that two sets of fees are prescribed for follow-up inspections in paragraphs 10 and 11 of section 10 of the regulation. Where the follow-up inspection reveals that a previous order of an inspector has not been complied with, the fee is double that which is charged if the previous order has been complied with.

Your Committee has been advised by Counsel to the Ministry that this provision will be changed so that only one fee will be charged.

MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS

Ontario Regulation 353/86 under the Pension Benefits Act

The above regulation amends Regulation 746 of R.R.O. 1980 under the Pension Benefits Act. Your Committee's concern is with the two sets of fees provided for upon the filing of an annual information return under the Act. Specifically, section 11(4) of the amended regulation in effect provides that where the annual information return required to be filed with the Commission is filed later than six months following the fiscal year end of the pension plan, the fee shall be twice that which is payable than if the information return is filed within the six months. The fees are based on a fixed amount with respect to each member of the pension plan with both a minimum and maximum total fee payable. The result is that the more employees a company has, the greater is the late filing fee to which it is exposed.

Your Committee has notified the Ministry of its concern that the above late filing fee seems to operate as a penalty. Ministry Counsel has advised that the late

filing fee is designed not only as an incentive for prompt filing but also to cover increased administrative costs incurred in following up on the sponsors who file late.

Although a charge for administrative costs is proper, your Committee is of the opinion that the late filing fee goes beyond imposing an administrative charge and creates a penalty. It is the threat of the penalty of paying a double fee that acts as the incentive for prompt filing. As well, the double fee provision imposes a greater penalty on companies with more employees since it is directly related to the number of employees. There is no indication that administrative costs in following up on late filing increase with the number of employees.

Your Committee recommends that, to avoid the characterization of the late filing fee as a penalty, a fixed administrative charge applicable evenly to all persons who file late replace the present provisions. By way of comparison, your Committee notes with approval the very clear manner in which an administrative charge is provided for in the Health Care Accessibility Act, 1986, S.O. 1986, Chapter 20. Section 4(2) of that Act provides for an "administrative charge prescribed by the regulations" where there has been an unauthorized payment to a practitioner. Ontario Regulation 703/86 under that Act prescribes the administrative charge to be \$50.00.

MINISTRY OF REVENUE

Ontario Regulation 648/86 under the Gasoline Tax Act

The above regulation is a general regulation under the Gasoline Tax Act. It contains a provision creating a penalty, which is described below. Counsel to your Committee has discussed this with the Ministry's Acting Director of Legal Services and has been assured that Ministry staff will be instructed not to impose the penalty and that the penalty will be removed on the next revision to the regulation.

Section 3(7) of the regulation provides that the amount of the refund of the tax paid on gasoline by a purchaser "shall be reduced by the greater of \$5.00 or 200 percent of the amount of the refund of tax claimed if the applicant for the refund misrepresents a material fact on the application for the refund or on or in connection with any document used to support an application for a refund of tax, other than an invoice referred to in subsection (5)." The "reduction" of the refund by 200 percent operates as a penalty, since 100 percent is a

total disallowance of the refund and the other 100 percent is an amount added to the applicant's assessment for tax.

* * *

APPENDIX A

Extract from the REGULATIONS ACT, R.S.O. 1980, c. 446:

12. (1) At the commencement of each session of the Legislature a standing committee of the Assembly shall be appointed, to be known as the Standing Committee on Regulations, with authority to sit during the session.
- (2) Every regulation stands permanently referred to the Standing Committee on Regulations for the purposes of subsection 3.
- (3) The Standing Committee on Regulations shall examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, and shall deal with such other matters as are referred to it from time to time by the Assembly.
- (4) The Standing Committee on Regulations may examine any member of the Executive Council or any public servant designated by any such member respecting any regulation made under an Act that is under his administration.
- (5) The Standing Committee on Regulations shall from time to time, report to the Assembly its observations, opinions and recommendations.

* * *

APPENDIX B

TERMS OF REFERENCE

Standing Order 90(j)

- 90 (j) Standing Committee on Regulations and Private Bills to be the Committee to which all Private Bills, other than Estate Bills or Bills providing for the consolidation of a floating debt or renewal of debentures, other than local improvement debentures, of a municipal corporation, shall be referred after first reading; and, to be the Committee provided for by section 12 of the Regulations Act, and having the terms of reference as set out in that section, namely: to examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, but in so doing regard shall be had to the following guidelines:
- (1) Regulations should not contain provisions initiating new policy, but should be confined to details to give effect to the policy established by the statute;
 - (2) Regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties;
 - (3) Regulations should be expressed in precise and unambiguous language;
 - (4) Regulations should not have retrospective effect unless clearly authorized by statute;
 - (5) Regulations should not exclude the jurisdiction of the courts;
 - (6) Regulations should not impose a fine, imprisonment or other penalty;
 - (7) Regulations should not shift the onus of proof of innocence to a person accused of an offence;
 - (8) Regulations should not impose anything in the way of a tax (as distinct from fixing the amount of a licence fee, or the like); and
 - (9) General powers should not be used to establish a judicial tribunal or an administrative tribunal;

and, the Committee shall from time to time report to the House its observations, opinions and recommendations as required by section 12(3) of the Regulations Act, but before drawing the attention of the House to a regulation or other statutory instrument the Committee shall afford the ministry or agency concerned an opportunity to furnish orally or in writing to the Committee such explanation as the ministry or agency thinks fit. (Provisional.)

* * *

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Standing Committee on Regulations and Private Bills

Special Report 1988

1st Session 34th Parliament
37 Elizabeth II

STANDING COMMITTEE
ON REGULATIONS AND
PRIVATE BILLS

SPECIAL REPORT 1988

1st Session, 34th Parliament
37 Elizabeth II



The Honourable Hugh Edighoffer, M.P.P.
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on Regulations and Private Bills
has the honour to present its First Special Report for
the First Session of the Thirty-fourth Parliament and
commends it to the House.

A handwritten signature in cursive script, reading "David Fleet".

David G. Fleet, M.P.P.
Chairman

Queen's Park
April, 1988

MEMBERSHIP AND STAFF OF THE COMMITTEE

DAVID G. FLEET
Chairman of the Committee

CHARLES BEER
Vice-Chairman of the Committee

JOHN CLEARY

TONY RUPRECHT

JOAN FAWCETT

DAVID SMITH

GEORGE McCAGUE

JOHN SOLA

JIM POLLOCK

MEL SWART

GILLES POULIOT

Tannis Manikel
Clerk of the Committee

Lachlan R. MacTavish, Q. C.
Former Counsel to the Committee

Philip Kaye
Research Officer
Legislative Research Service

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I INTRODUCTION

The content of this Report was originally considered by your Committee in 1985. Regulations for the last 4 months of 1984 were reviewed. The membership of the Committee at that time consisted of Howard Sheppard, Chairman, Phil Gillies, Vice-Chairman, Don Cousens, Odoardo Di Santo, Mickey Hennessy, William Hodgson, Vince Kerrio, Bob MacKenzie, Hugh P. O'Neil, Alan Robinson, Yuri Shymko and Ronald G. Van Horne.

In presenting this Report your Committee, as presently constituted, has endeavored to reflect the views and topics of interest of your Committee as constituted in 1985.

This Report includes four topics:

- I Statistics pertaining to regulations filed with the Registrar of Regulations under the Regulations Act during 1984.
- II Your Committee's findings pertaining to regulations filed during September to December 1984 inclusive. This covers 269 regulations namely, Ontario Regulation 572/84 to Ontario Regulation 840/84 inclusive.
- III A review of your Committee's visit to the Congress of the United States.

IV Recommendations for revision of the Regulations Act
R.S.O. 1980, chapter 446 and the regulation pursuant
thereto.

In previous reports, your Committee has extensively studied the subject known as Notice and Comment. Your Committee's First Report 1983 at page 19 recommended that the Regulatory system established in Ontario be continued but with greater emphasis on incorporating suitable Notice and Comment procedures in appropriate statutes. The systems of Notice and Comment vary greatly in the United Kingdom, Australia, United States, Canada, and the Canadian provinces. Each system has developed in response to the particular needs of each jurisdiction. In the same report, your Committee recommended that developments in the other jurisdictions should be actively studied.

Your Committee is most grateful to the Commonwealth Parliamentary Association and the Secretariat of the Commonwealth Delegated Legislation Committee. Their periodic bulletins describe the work ongoing in Commonwealth countries to protect the rights of individuals and to ensure that the Executive is properly accountable to Parliament in the making of delegated legislation.

Your Committee wishes to acknowledge the important and dedicated role played by Lachlan R. MacTavish, Q.C. as

Counsel to your Committee since its inception in April, 1977 until his death in 1985.

Mr. MacTavish's record was probably unique in the history of the Legislature of Ontario, covering nearly half a century. His first appointment was as Assistant Law Clerk under the Speaker of the House in January, 1936. He subsequently served as a law officer of the House in many different capacities including that of Senior Legislative Counsel from 1947 to 1970.

Mr. Lachlan R. MacTavish served your Committee with patience, understanding and, above all, with dedication and distinction. His unmatched experience has been invaluable. We will miss him greatly.

* * *

II STATISTICS: 1984

During calendar year 1984, there were 840 regulations filed with the Registrar of Regulations pursuant to the Regulations Act. The following table presents the totals for the eight years ending in 1984:

<u>Year</u>	<u>Number of Regulations</u>
1977	975
1978	1,007
1979	962
1980	1,141
1981	884
1982	837
1983	815
1984	840

The striking feature of these figures is that they show a peak in 1980 and thereafter a considerable drop during the period.

Of the 840 regulations filed in 1984, an estimated 75% amended existing regulations, 20% were new regulations and the remaining 5% revoked existing regulations. This proportion has been more or less constant over the eight year period shown above.

The 1984 regulations occupy 3,667 double-column pages in The Ontario Gazette. The following table will enable comparisons to be made with other years:

Year	Pages
1977	1,797
1978	1,965
1979	2,568
1980	2,138
1981	1,952
1982	2,021
1983	2,245
1984	3,667

Despite a declining number of regulations filed in recent years, the number of pages occupied by the regulations in The Ontario Gazette has increased. The increase in 1984 may be explained in part by revisions of the voluminous OHIP schedules of fees and tables under the Health Insurance Act and the revision of our court system under the Courts of Justice Act, 1984.

The following table lists the Acts under the authority of which five or more regulations were filed during 1984:

	<u>1984</u>
Crop Insurance Act (Ontario)	34
Education Act	12
Environmental Assessment Act	28
Farm Income Stabilization Act	6
Farm Products Marketing Act	7
Game and Fish Act	23
Health Insurance Act	34
Health Protection and Promotion Act	9
Highway Traffic Act	69
Milk Act	16
Parkway Belt Planning and Development Act	21
Planning Act	119

More detailed statistical information may be found in the "Table of Regulations Filed Under the Regulations Act to the 31st Day of December, 1984", prepared by the Registrar of Regulations and published as an addendum to The Ontario Gazette in February, 1985.

III IRREGULAR REGULATION REPORTED

At the 1968-69 Session of the Legislature, the Regulations Act was amended by adding a section providing for the establishment of your Committee and laying down its basic duties. This Act is set out in Appendix B on page 17 of this Report. Subsection 12(3) requires your Committee to "examine the regulations with particular reference to the scope and the exercise of delegated Legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes."

In pursuance of its statutory "watch dog" function, your Committee, through its Counsel, examined in detail the 269 regulations (O. Reg. 572/84 to O. Reg. 840/84) filed during the last four months of 1984. In its opinion one regulation was irregular because it was given retroactive effect without proper statutory authority. This was both contrary to what your Committee understands to be the law of Ontario and was a contravention of guideline (d) of the Committee's Terms of Reference which reads:

- (d) Regulations should not have retrospective effect unless clearly authorized by statute.

This was one of the Guidelines recommended by the Royal Commission Enquiry into Civil Rights (The Honourable J. C. McRuer, Chairman), Report No. 1, Volume 1, at page 378. This recommendation was endorsed by your Committee in its Second Report 1979 at page 14 and adopted by the House on 14 March 1980.

In accordance with the Terms of Reference (Appendix A hereto), the impugned regulation was discussed by Counsel with the Director of the Legal Branch of the Ministry concerned. The Chairman of the Committee wrote to the Minister concerned advising him of your Committee's view and inviting his comments. The impugned regulation is set out below:

MINISTRY OF COMMUNITY AND SOCIAL SERVICES

Family Benefits Act
O. Reg. 748/84

The purpose of this regulation was to increase the amount of one of the factors used in computing a certain allowance under the Act. The regulation was filed on November 20th, 1984 and it provided that it "shall be deemed to have come into force on November 1st, 1984."

Your Committee has been unable to find, and the Ministry is unable to cite, any statutory authority for the retroactivity. In this respect the regulation has contravened Guideline (d).

* * *

IV Visit to the Congress of the United States

Since your Committee began its active existence in March, 1978 it has made four trips to outside jurisdictions: two to the Joint Committee of the Senate and House of Commons of Canada on Regulations and Other Statutory Instruments in Ottawa, the latest of these in January, 1984.

The third trip occurred in 1980, when the then Chairman of the Committee, John Williams, M.P.P., attended the First Commonwealth Conference of Delegated Legislation Committees at Canberra, Australia (see Second Report 1980, pages 4 - 7).

In March, 1985 your Committee held two days of meetings with members and officials of the Senate and House of Representatives of the Congress of the United States in Washington, D.C.

The purpose of these discussions was to study the subject commonly known as Notice and Comment, especially new features in other countries, in an endeavour to find possible improvements to the Ontario system.

This subject has been, and continues to be, a troublesome matter in many jurisdictions, including the United Kingdom, Australia, Canada and the United States. How and what kind of notice should be given to the public and private sectors by government and its agencies of

proposed regulations? What means should be provided for submissions for or against the proposals, thus allowing input into the making of regulations by all who may wish to participate?

Your Committee conducted two days of intensive discussions with representatives of the Senate, the House, and relevant agencies of the Congress of the United States. These agencies included the Congressional Research Service of the Library of Congress, the Subcommittee on Administrative Law and Governmental Relations of the Judiciary Committee of the House of Representatives, and the Subcommittee on Administrative Practices and Procedures of the Judiciary Committee of the Senate. Your Committee has concluded that the Ontario practices and procedures with respect to Notice and Comment in the field of delegated legislation, developed over almost half a century, are well suited to our particular needs. Your Committee therefore does not recommend any changes as a result of its observations of the very complicated system that appears to be necessary for the Congress of the United States to function in the field of delegated legislation. Your Committee will continue to observe practices followed in other jurisdictions.

V Revision of the Regulations Act and
the Regulation made Thereunder

The Act that provides for the existence of this Committee and under which it functions (along with the Terms of Reference given it by Order of the House) is, of course, the Regulations Act.

Your Committee is also concerned with the secondary legislation made under the authority of the Regulations Act, namely Regulation 899 of the Revised Regulations of Ontario, 1980. (The Regulations Act and Regulation 899 are reproduced in Appendices "B" and "C" respectively of this Report.)

The Regulations Act was first passed and came into force in 1944 after a very intensive study of all of the existing legislation and literature on the subject, both in Canada and elsewhere. Although the Act has been amended some eleven times since, its basic principles remained unchanged. It requires the central filing and the gazetting of all regulations of a legislative nature. Most of the amendments have been to the definition of "regulation". These amendments exclude from the Act regulations considered not to be of a legislative nature or which are required to be filed and recorded elsewhere.

The only really important amendment in principle to the Act was enacted in 1968-69 when section 12 was added.

The purpose of this provision was to create this Committee to scrutinize all regulations coming within the scope of the Act. This was to ensure that the government was not using the regulatory process to circumvent the exercise of the sovereign power of the Legislature.

The earliest predecessor to Regulation 899 was made in 1944 and substantially remade in 1959. It has remained unchanged ever since, except that section 9, which deals with the rules made by the Rules Committee under the Judicature Act, was revoked by O. Reg. 592/83.

Although the Act has served well for more than 40 years, your Committee recommends that a general review and revision of both the Act and the Regulation be done. In making this recommendation your Committee does not in any way intend to imply that any of the basic principles now in place need be altered; it simply considers that an updating of the present legislation would be beneficial.

In making this recommendation your Committee must point out that it is endorsing and emphasizing the recommendation made by your Committee in its First Report 1978 at pages 49, 50 and 51.

Some of the areas which might command attention for amendments are as follows:

1. The definition of "regulation" in section 1 of the Act contains several exceptions. Other Acts,

however, also list exceptions to the Regulations Act. In addition, there are Acts which specifically declare that the Regulations Act applies to certain regulations thereunder. An overall picture of the scope of the Act is thus impossible to obtain without considerable research.

2. Section 3 of the Act states the general rule as to the commencement of regulations. However, the wording does not clearly state its true intent and meaning.
3. Section 6 of the Act, which sets out powers of the Attorney General, appears to be far too broad in scope. Your Committee understands that these powers have never been exercised and therefore appear to be unnecessary. The provision should be re-enacted to contain only the powers that the Minister needs in order to administer the Act.
4. Section 7 of the Act sets out the powers and duties of the Registrar of Regulations in language unchanged since 1944. Your Committee is of the view that the provision should be re-written to state more accurately what the current functions of the Registrar are. This includes a review of section 1 of the Regulation, which should be part of the Act itself. The right of the Minister to vest powers in the Registrar (s.7(1)(b)) should be eliminated.
5. Section 8 of Regulation 899 authorizes the Registrar of Regulations to designate any one of a number of

persons to perform his duties in his place and
stead. In the opinion of your Committee, this power
should be the prerogative of the Minister in charge
of administering the Act.

* * *

APPENDIX A

ORDER OF REFERENCE

Extract from the Votes and Proceedings of the Legislative Assembly of Ontario, Monday, April 2, 1984.

On motion by Mr. Wells, seconded by Mr. Treleaven

Ordered - That the following Standing Committee be established for this Session, with power to examine and inquire into such matters as may be referred to it by the House, with power to send for persons, papers and things, as provided in Section 35 of the Legislative Assembly Act:

The Standing Committee on Regulations and Other Statutory Instruments is appointed for this Session to be the Committee provided for by section 12 of the Regulations Act, and has the terms of reference as set out in that section, namely: to examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, but in so doing regard shall be had to the following guidelines:

- (a) Regulations should not contain provisions initiating new policy, but should be confined to details to give effect to the policy established by the statute.
- (b) Regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties.
- (c) Regulations should be expressed in precise and unambiguous language.
- (d) Regulations should not have retrospective effect unless clearly authorized by statute.
- (e) Regulations should not exclude the jurisdiction of the courts.
- (f) Regulations should not impose a fine, imprisonment or other penalty.
- (g) Regulations should not shift the onus of proof of innocence to a person accused of an offence.
- (h) Regulations should not impose anything in the way of a tax (as distinct from fixing the amount of a licence fee, or the like.)
- (i) General powers should not be used to establish a judicial tribunal or an administrative tribunal.

And the Committee shall from time to time report to the House its observations, opinions and recommendations as required by section 12(3) of the Regulations Act, but before drawing the attention of the House to a regulation or other statutory instrument the Committee shall afford the ministry or agency concerned an opportunity to furnish orally or in writing to the Committee such explanation as the ministry or agency thinks fit.

And the Committee shall have power to employ counsel and such other staff as it considers necessary.

* * *

APPENDIX B

Regulations Act

1. In this Act,

- (a) "file" means file in the manner prescribed in section 2;
- (b) "Minister" means the member of the Executive Council to whom the administration of this Act is assigned by the Lieutenant Governor in Council;
- (c) "Registrar" means the Registrar of Regulations;
- (d) "regulation" means a regulation, rule, order or by-law of a legislative nature made or approved under an Act of the Legislature by the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council, but does not include,
 - (i) a by-law of a municipality or local board as defined in the Municipal Affairs Act,
 - (ii) a regulation made under The Broker-Dealers Act, 1947, the Teaching Profession Act, section 78 of the Cemeteries Act or by an authority under section 30 of the Conservation Authorities Act, or a by-law of a hospital made under the Public Hospitals Act, or the constitution and by-laws of an association made under the Agricultural Associations Act,
 - (iii) an order of the Ontario Municipal Board, other than an order prescribing the rules governing proceedings before the Board,
 - (iv) an order, direction or designation of the Lieutenant Governor in Council under section 7, 29, 40, 41, 42, 44 or 65 of the Public Transportation and Highway Improvement Act or a designation by the Minister of Transportation and Communications under section 43 or 91 of that Act,
 - (v) a schedule of classifications for civil servants, including

qualifications, duties and salaries prescribed under the Public Service Act,

- (vi) an order, approval, regulation, prescription, direction or instruction of the Minister of Intergovernmental Affairs or the Ministry of Intergovernmental Affairs that the Minister or the Ministry is empowered to give or make under the Municipal Act or under the Municipal Affairs Act, except clause 6(b) thereof. R.S.O. 1970, c. 410, s. 1; 1971, c. 61, s. 1; 1972, c. 1, ss. 1, 100 (2). 104 (6); 1972, c. 3, s. 17.

2. (1) Every regulation shall be filed in duplicate with the Registrar together with a certificate in duplicate of its making signed by the authority making it or a responsible officer thereof and, where approval is required, with a certificate of approval in duplicate signed by the authority so approving or by a responsible officer thereof, except that in the case of a regulation made by a minister that does not require approval, no certificate is required.

(2) Where a regulation is made or approved by the Lieutenant Governor in Council, the filing with the Registrar of two copies of it certified to be true copies by the Clerk of the Executive Council shall be deemed to be compliance with subsection (1). R.S.O. 1970, c. 410, s. 2.

3. Unless otherwise stated in it, a regulation comes into force and has effect on and after the day upon which it is filed. R.S.O. 1970, c. 410, s. 3.

4. Except where otherwise provided, a regulation that is not filed has no effect. R.S.O. 1970, c. 410, s. 4.

5. (1) Every regulation shall be published in The Ontario Gazette within one month of its filing.

(2) The Minister may at any time by order extend the time for publication of a regulation and the order shall be published with the regulation.

(3) A regulation that is not published is not effective against a person who has not had actual notice of it.

(4) Publication of a regulation,

- (a) is prima facie proof of its text and of its making, its approval where required, and its filing; and

- (b) shall be deemed to be notice of its contents to every person subject to it or affected by it,

and judicial notice shall be taken of it, of its contents and of its publication. R.S.O. 1970, c. 410, s. 5.

6. The Minister may,

- (a) determine whether a regulation, rule, order or by-law is a regulation within the meaning of this Act and his decision is final;
- (b) determine who shall be deemed responsible officers within the meaning of section 2; and
- (c) determine any matter that may arise in connection with the administration of this Act. R.S.O. 1970, c. 410, s. 6.

7. (1) There shall be a Registrar of Regulations appointed by the Lieutenant Governor in Council who,

- (a) is responsible for the numbering and indexing of all regulations filed in his office and for their publication; and
- (b) shall exercise such powers and perform such duties as are vested in or imposed upon him by this Act, the regulations made hereunder, or the Minister.

(2) The Registrar may issue a certificate as to the filing of a regulation and every such certificate is prima facie proof of the facts stated in it without any proof of appointment or signature.

(3) Where a map or plan,

- (a) forms part of a regulation for the purpose of illustrating a description of land; and
- (b) is identified in the regulation by a number given to it by the Registrar,

and the regulation states that the map or plan is filed in the office of the Registrar, he may in his discretion file the map or plan in his office in numerical order and no publication of the map or plan is necessary. R.S.O. 1970, c. 410, s. 7.

8. Regulations shall be numbered in the order in which they are filed, and a new series shall be commenced each year. R.S.O. 1970, c. 410, s. 8.

9. A regulation may be cited or referred to as "Ontario Regulation" or "O. Reg." followed by its filing number, a virgule and the last two figures of the year of its filing. R.S.O. 1970, c. 410, s. 9.

10. (1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing the powers and duties of the Registrar;
- (b) prescribing the form, arrangement and scheme of regulations;
- (c) prescribing a system of indexing;
- (d) providing for the preparation and publication of a consolidation or codification of regulations that have been filed, and for the preparation and publication of supplements thereto;
- (e) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) Publication of a regulation in a consolidation or codification or supplement thereto mentioned in clause (1) (d) shall be deemed publication within the meaning of this Act. R.S.O. 1970, c. 410, s. 10.

11. The filing or publication of a regulation under this Act does not have the effect of validating or correcting any such regulation that is otherwise invalid or defective in any respect or for any reason. R.S.O. 1970, c. 410, s. 11.

12. (1) At the commencement of each session of the Legislature a standing committee of the Assembly shall be appointed, to be known as the Standing Committee on Regulations, with authority to sit during the session.

(2) Every regulation stands permanently referred to the Standing Committee on Regulations for the purposes of subsection (3).

(3) The Standing Committee on Regulations shall examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, and shall deal with such other matters as are referred to it from time to time by the Assembly.

(4) The Standing Committee on Regulations may examine any member of the Executive Council or any public servant designated by any such member respecting any

regulation made under an Act that is under his administration.

(5) The Standing Committee on Regulations shall, from time to time, report to the Assembly its observations, opinions and recommendations. R.S.O. 1970, c. 410, s. 12.

* * *

APPENDIX C

Revised Regulations of Ontario 1980

REGULATION 899 (as amended)

under the Regulations Act

1. The Registrar shall advise upon and assist in the preparation of regulations.

2. Where a regulation includes a sketch or illustration, it shall be a line cut and not greater than 2 1/2 inches in width and the cut, plate or other device necessary in the printing of the sketch or illustration shall be delivered to the Registrar when the regulation is filed.

3. When a regulation is filed, the Registrar shall mark the number assigned to the regulation, the word "Filed" and the day, month and year of filing upon the regulation and he shall evidence such marking by his signature.

4. Filed regulations shall be available for public inspection.

5. In publishing regulations, the Registrar may correct clerical, grammatical or typographical errors and, for the purpose of obtaining a uniform mode of expression, may alter the numbering and arrangement of any provision and may make such alterations in language or punctuation as are of an editorial nature.

6. The Registrar shall maintain a register and, upon the filing of a regulation, the Registrar shall enter in the Register,

- (a) the number assigned to the regulation;
- (b) the subject-matter of the regulation;
- (c) the Act authorizing the making of the regulation;
- (d) the Ministry or other authority filing the regulation; and
- (e) a statement indicating whether or not the regulation replaces or amends other regulations and a reference to the numbers of the regulations so replaced or amended.

7. The Registrar shall maintain an Act index and, upon the filing of a regulation, the Registrar shall enter in the Act index the numbers of all regulations made under each Act.

8. The Registrar may designate any solicitor in the office of the Legislative Counsel or Registrar of Regulations as Assistant Registrar of Regulations to perform the duties of the Registrar under this Regulation in his place and stead.

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Standing Committee on Regulations and Private Bills

Second Report 1988

1st Session 34th Parliament
37 Elizabeth II

STANDING COMMITTEE
ON REGULATIONS AND
PRIVATE BILLS

SECOND REPORT 1988

1st Session, 34th Parliament
37 Elizabeth II



The Honourable Hugh Edighoffer, M.P.P.
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on Regulations and Private Bills
has the honour to present its Second Report for the First
Session of the Thirty-fourth Parliament and commends it
to the House.

A handwritten signature in cursive script, reading 'David G. Fleet'.

David G. Fleet, M.P.P.
Chairman

Queen's Park
June, 1988

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

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Chairman of the Committee

CHARLES BEER
Vice-Chairman of the Committee

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Research Officer
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STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

HEARINGS ON REGULATORY REFORM

REGULAR AND SUBSTITUTE MEMBERS

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Chairman of the Committee

BILL BALLINGER

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ROBERT CALLAHAN

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PREFACE

It has been said that the Emperor Caligula preferred to write his laws in very small letters and then hang them up on high pillars "the more effectively to ensnare the people." Today in Ontario, those "very small letters" are thousands of regulations, rules, and policy directives. They are hidden on modern-day "pillars" – desks and shelves in offices of Ministries and government agencies throughout the Province. The need to make these "secret" laws more accessible to the public is a major theme of this report. The ordinary citizen has a right to know what she or he is free to do or is required to do.

Two other themes surface in this report. They are: (1) public participation in the regulation-making process should be improved and made more fair; and (2) parliamentary scrutiny of the process must be made more effective.

All three themes were raised during our eight days of public hearings in March 1988. The Committee thanks the witnesses for sharing their knowledge and concerns. We have been impressed by the high quality of the testimony; we have also been greatly assisted by written submissions received prior, during, and subsequent to the hearings.

Experts in the regulatory field provided us with a firsthand view of recent developments not only in Ontario, but elsewhere. These experts came from Ontario and several other Canadian jurisdictions: the federal government, Quebec, Saskatchewan, and Manitoba. Their evidence ensured that the Committee had an in-depth understanding of practices elsewhere, before making recommendations for Ontario.

The Committee has been ably assisted by its staff and expresses its appreciation to them. Our proceedings were administered as usual in exemplary fashion by our Clerk, Tannis Manikel. Our Counsel, Andrew C. Dekany, provided invaluable assistance with his expertise on the regulatory process. Mr. Dekany played a major role in developing our proposed Citizens' Code of Regulatory Fairness. Philip Kaye, a lawyer with the Legislative Research Service, prepared excellent background papers for the hearings and, pursuant to the Committee's instructions, drafted this report. Finally, we

wish to thank the Office of Legislative Counsel of the Ministry of the Attorney General for giving Members a clear and concise explanation of the current regulatory system.

The Committee sincerely hopes that the recommendations made in this report, although not legally binding, will be considered by the Government and implemented. From a procedural point of view, we have decided to invoke Standing Order 32. Accordingly, we request a debate in the House on the report and a comprehensive response from the Government. We believe the time has come for reforms which will serve the interests of both the public and the parliamentary system.

I

THE NEED FOR REGULATORY REFORM

Background

The numbers seem overwhelming: a total of 3,846 regulations and 12,923 pages; an average of 769 regulations and 2,585 pages per year; a rate of over eight regulations for every bill passed by the House. Together, these figures represent the quantitative side of regulatory activity in Ontario over the past five years. On a year-by-year basis, the statistics break down as follows:

REGULATIONS			ACTS	
<u>Year</u>	<u>Number</u>	<u>Pages</u>	<u>Number</u>	<u>Pages</u>
1983	815	2,245	134	851
1984	840	3,667	97	1062
1985	703	1,726	52	237
1986	763	2,946	109	887
1987	<u>725</u>	<u>2,339</u>	<u>59</u>	<u>890</u>
TOTAL	3,846	12,923	451	3,927

One witness – Professor Hudson Janisch of the University of Toronto – brought the 1987 regulations as an exhibit to a meeting of the Committee. The amount of paper involved was described as:

... a large package ... My estimate would be that it is six inches tall ... I think we should weigh it, but we agree it is an impressive bulk. (March 24, 1988)

Need for Regulations

The Committee does not wish to comment on whether Ontario has too many or too few regulations.* We recognize that regulations are necessary for several reasons. As the Committee heard:

... the sheer magnitude of the business of government means that not everything can be dealt with in the parent legislation. (Professor William Bogart, March 24, 1988)

Some other reasons that have been raised to justify a regulation-making power are: the Legislature may not have the technical expertise to determine the details of a legislative scheme; the ability to respond quickly to urgent situations is strengthened; and flexibility in responding to administrative problems is enhanced.

Significance of Regulations

Not only are regulations necessary, but they can affect the individual far more than the statute under which they are made:

... the real impact of law is in the regulations, not so much in the general statute itself. (Professor Hudson Janisch, March 24, 1988)

It was stressed to the Committee by Professor Janisch that we live in an age of "skeleton legislation". The "real cutting edge" of the law lay in what he termed the "little laws" – regulations, rules, orders, policies, guidelines, policy manuals, etc. In order to highlight the significance of these "little laws", he quoted from a passage by Lord Hewart who, over half a century ago, had written about the ordinary citizen:

As a rule he is not interested in what may be termed the immensities and eternities of legislation or of jurisprudence. He is concerned with the particular, because it is the particular which has to be done.

* We make one exception in the area of land use regulations. See our comments in Chapter VII.

Another witness – Paul Muldoon of Energy Probe – echoed these sentiments. He testified that:

So often in the environmental world, we look to the regulations to see what the law is . . . (March 30, 1988)

The regulations provided "the main impetus of law". By way of illustration, Muldoon pointed out that regulations commonly articulated environmental objectives, criteria, and standards, among other things. At times, they set the requirements for pollution permits. In addition, "they set the implementation of liability regimes, along with a whole host of substantive issues." (March 30, 1988)

Principles for Reform

This mass of regulations is published each week in a little-known publication entitled The Ontario Gazette. We were not surprised when the Registrar of Regulations said:

. . . I think it is pretty much accepted, 99 per cent of the public probably is not aware of the Ontario Gazette, much less reads it. I would doubt that more than five per cent of the lawyers look at it. (Russell Yurkow, March 21, 1988)

How much public consultation precedes publication in the Gazette? How accessible are the regulations to those most affected? It is the Legislature which gives the authority in a statute to issue regulations; how much control does the Legislature exercise once that authority has been given?

These questions have formed the basis of the Committee's examination of the regulation-making process in Ontario. We have concluded that three principles must underlie reform of that process. They are:

1. FAIRNESS: improved public participation;
2. ACCESSIBILITY: greater accessibility by the public; and
3. ACCOUNTABILITY: more effective parliamentary scrutiny.

The principles of fairness and accessibility recognize that the public has an important role to play in the development of regulations. As well, they recognize that regulations must be made available and understandable (as much as possible) to those whose conduct they govern. These principles are raised most forcefully in the chapters in this report entitled "Notice and Comment" and "Regulations: Form and Access." (pp. 5 – 17, 46 – 52)

The other principle – accountability in the sense of parliamentary control – sees regulations as delegated legislation, but legislation nonetheless. As such, they must be brought more fully under the scrutiny of the Legislature. The challenge facing the Legislature is to ensure that it "genuinely delegates legislation power and does not abdicate its continuing responsibility." (Professor Janisch, March 24, 1988) Abdication does not occur when the exercise of regulation-making powers is held accountable to the Legislature.

The theme of parliamentary control of delegated legislation surfaces throughout the report, especially in the chapters on disallowance, the mandate of the Committee, and sunset clauses. (pp. 18 – 24, 25 – 36, 57 – 60)

II

NOTICE AND COMMENT

The Concept

The phrase "Notice and Comment" refers to procedures for:

1. informing the public of proposed regulations; and
2. affording interested persons and organizations an opportunity of making their views – for or against – known to the proposing authorities.

The Committee strongly supports the establishment of Notice and Comment procedures. We believe that one of the cornerstones of any democracy is the opportunity for those affected by laws to be heard, both before and after such laws have been made. We agree that:

Only through public consultation and input do regulations gain legitimacy and currency – and indeed, become better regulations. (Paul Muldoon, March 30, 1988)

Current Situation

Ontario does not have, and indeed never has had, any general statute imposing Notice and Comment procedures for proposed regulations. The Province, however, has established the practice of incorporating Notice and Comment procedures in particular statutes. This practice has extended to a few statutes only. Examples are outlined below.

Mandatory ProceduresOccupational Health and Safety Act

Under the Occupational Health and Safety Act, regulations may prescribe "designated substances." "Designated substances" are defined as substances to which the exposure of a worker is prohibited or controlled.

Before a substance can be designated, the Minister of Labour must publish two notices in The Ontario Gazette. These notices are described in section 22 of the Act as follows:

1. The first notice must state that the substance may be designated. It must ask for submissions in relation to the designation.
2. The second notice sets forth the proposed regulation respecting the designation of the substance. This notice must be published at least sixty days before the regulation is filed with the Registrar of Regulations.

The Committee learned that the Ministry of Labour has developed a consultation process that goes far beyond the requirements of section 22. (This consultation process is discussed later.) Tim Millard of the Ministry's Occupational Health and Safety Division explained that:

...notwithstanding the fact that a process was established in the statute for public notification with respect to regulation-making, it was still found to be wanting by our clients. (March 29, 1988)

Appendix D contains the two notices which appeared in The Ontario Gazette regarding the designation of arsenic. Arsenic is one of the 12 substances currently designated under the Act.

Industrial Standards Act

The Industrial Standards Act provides a means for employers and employees jointly to establish schedules of working conditions. These schedules apply to designated industries and zones; once they are declared in force by the Cabinet, they become binding upon all employers and employees in those industries and zones.

Schedules under the Act are published in The Ontario Gazette as schedules to regulations. Presently, there are only four schedules in force. They cover approximately 400 employers and 8,300 employees.

The establishment of a schedule is preceded by a system of Notice and Comment, which operates in the following manner:

- A conference of employers and employees in a designated industry and zone is convened to negotiate the schedule. Notice of the conference must be published "at least once in each of two consecutive weeks in a newspaper having general circulation in the zone for which the conference is to be held." (section 8) Where the zone is the whole of Ontario, notice must be published in at least five newspapers. Similar notice requirements are prescribed for amendments to schedules.

A notice pertaining to the "Building Trades Construction Industry" for the Ottawa Zone is reproduced in Appendix E. Appendix E also contains a notice of a proposed amendment to the schedule governing the "Men's and Boys' Clothing Industry" for the Ontario Zone.

Planning Act, 1983

The Planning Act, 1983 imposes a Notice and Comment requirement in section 46. Under this section, the Minister of Municipal Affairs may issue, amend, and revoke zoning orders. These orders are considered to be regulations under the Regulations Act.

Before amending or revoking an order, the Minister must:

give notice or cause to be given notice thereof in such manner as he considers proper and shall allow such period of time as he considers appropriate for the submission of representations in respect thereof.
(s. 46(a))

Appendix F contains examples of notices under section 46 of the Planning Act.

Voluntary Procedures

The absence of legislation does not preclude ministries from establishing Notice and Comment procedures on a voluntary basis. The Registrar of Regulations testified that "with a lot of regulations now, there is consultation between the government and the particular interest group involved." He continued:

I think in just about any controversial area, certainly in transportation regulations dealing with licensing, the government consults anyway, just as a matter of survival and politics . . . I think in most cases there is consultation. They solicit opinions. I do not think it is exposing a breach of confidentiality to say that the regulations committee of cabinet asks the ministry in almost all cases: "Are the affected groups aware of this? Have they been consulted?" (Russell Yurkow, March 21, 1988)

It was the assessment of the Chairman of the Cabinet Committee on Regulations, the Hon. Gregory Sorbara, that:

...if there was ever a world in which there was consultation and comment and an ability to have an input before the thing actually becomes law, it is there. (March 31, 1988)

Inadequacy of the Regulation-making Process

The Committee acknowledges that to some extent the public does participate in the Ontario regulation-making process on a formal and informal basis; however, formal participation is restricted to a few statutes as described earlier and informal participation is erratic and, by its very nature, discretionary. Current procedures have several deficiencies. They do not, for instance, give true "public" notice of proposed regulations. Affected parties are not always alerted. There is no assurance that submissions will be considered. There is no requirement that reasons be published as to why suggested changes have not been adopted.

The Committee was told about a recent survey of environmental rights in Canada and the United States. The survey was published in a book entitled Cross-Border Litigation: Environmental Rights in the Great Lakes Ecosystem by Paul Muldoon. Muldoon referred the Committee to the book's examination of the regulation-making processes of all the jurisdictions around the Great Lakes – two provinces, eight states, and two national governments. He thought that the conclusion that was drawn was a "balanced conclusion." It held that:

... the Ontario process is the least accessible, or at least one of the least accessible, as compared to all other jurisdictions. (March 30, 1988)

The theme of inaccessibility was raised with respect to regulations pertaining to the travel industry that were announced in February 1988. Speaking for the Alliance of Canadian Travel Associations, Gerald Heifetz said that:

Our industry association is totally in favour of more rules, of more professionalism and of moving the industry, but on a logical basis, not by edicts that are written in three weeks. (March 30, 1988)

Later, in his testimony, he pointed out that:

We will quietly lobby with the ministry to get words changed, but certainly this is one real example where you had no time. We were not even allowed the privileges that you get from open discussion. (March 30, 1988)

Our assessment of the regulation-making system is not motivated by a desire for unlimited consultation. Endless consultation would be disastrous; we do not wish to grind the system to a halt. Rather, our guiding philosophy is one of fairness to the public.

Options for Change

The central issue facing the Committee on the subject of Notice and Comment is: what mechanism will ensure greater, and more effective, public participation in the regulation-making process without impeding the efficient operation of government? In order to answer this question, which seeks a balance between what might be termed the "right to know" and the "right to govern", the Committee studied four general options. They are discussed below.

Option No. 1: Statute-by-Statute Model

That current practices continue, but there be more emphasis upon incorporating Notice and Comment procedures in appropriate Acts. This option was endorsed by a predecessor Committee over five years ago in its First Report 1983.

The statute-by-statute approach was recommended to this Committee by the former Registrar of Regulations. It was his contention that:

...most people who have worked within the system would agree that the best way to do it is on a situation-by-situation basis. (Sidney Tucker, March 31, 1988)

He was concerned that "one overall statute" would bring with it a long list of exceptions. He cautioned:

The danger with lists is that you always have one or more that is left off and it causes severe problems. (March 31, 1988)

As mentioned above, in 1983 the Regulations Committee supported the statute-by-statute option. Unfortunately, we can find few signs of its implementation. In theory, the option may be well suited to meeting Ontario's needs; but in practice, as the past five years have shown, it just does not work. What can best be described as "inertia" appears to have set in.

Option No. 2: Ministries of Labour
and Environment Model

That the Notice and Comment procedures adopted by (1) the Occupational Health and Safety Division of the Ministry of Labour and (2) the Air Resources Branch of the Ministry of the Environment be studied and applied by other Ministries, with such modifications as are necessary.

The Ministry of Labour has established a Joint Steering Committee on Hazardous Substances in the Workplace. The Committee is comprised of nine labour members and nine employer members; it is chaired by the Assistant Deputy Minister of the Occupational Health and Safety Division (Tim Millard). The primary objective of the Committee is the development and review of regulations for hazardous substances. Secondary objectives are ensuring that the regulations minimize risks to health and safety and that they are acceptable to both employers and workers. As part of the process for developing regulations, a panel chaired by Millard, and consisting of a labour representative and a management representative, will conduct public hearings.

As pointed out earlier, these practices have been built onto the requirements of section 22 of the Occupational Health and Safety Act. Millard spoke of the "object lesson":

I think the object lesson for me in all of that is that if you have a prescribed notification process in the statute, you cannot let that substitute for good consultation. It should only be seen, I think, as part of a good public consultation process. (March 29, 1988)

The Committee welcomes the Ministry's decision to view section 22 as creating only a minimum standard. We consider the Joint Steering Committee approach to be highly appropriate. However, we do have concerns about extending this approach to other ministries. There may be more than two broad interest groups involved; there may be problems in identifying representatives of those groups. Millard himself admitted that:

I very much expect that the process we are using is one that is designed to meet our particular needs. We do have identifiable clients and stakeholders here . . . In terms of organized labour and an employer community, we can identify them and bring them to a table. (March 29, 1988)

Another Ministry which has expanded its consultation procedures is the Ministry of the Environment. As part of its review of the General Air Pollution Regulation (308), the Ministry has held a series of public meetings throughout the Province. Meetings have been held, as well, with industrial associations, nongovernmental organizations, and academics, among others. A draft regulation will soon be prepared; it will be followed by another comment period, which will apparently extend for 45 days.

The public meetings were held in 20 locations. Each meeting had a session in the afternoon and evening. The afternoon session had an open house format with an opportunity to talk to Ministry officials on a one-to-one basis. The evening session, on the other hand, was more formal. A slide show identified the reasons for the review of the regulation and attempted to summarize the major proposals. Then, there would be a discussion of the details of the proposals.

The Ministry advertised notice of these meetings in approximately 90 newspapers. Notices were also placed in trade journals, such as the Air Pollution Control Association Bulletin and Eco/Log Week. The notice which appeared in the Globe and Mail of January 15, 1988, is reproduced in Appendix G.

Attendance at these meetings was very low. Frequently, fewer than 25 people attended. Complete statistics are provided in Appendix H.

The Committee wishes to commend the Ministry for attempting to increase public involvement in the regulation-making process. However, we are disappointed by the turnout and by the fact that "the audience tended to be somewhat professional in its content." (Dr. John Hewings, Ministry of the Environment, March 29, 1988) It appears that the notice procedures could have been more comprehensive. It was suggested by Paul Muldoon of Energy Probe that:

The reason those meetings have been so poorly attended, in my view, is that the ministry has failed to identify and to convince the common person of the relevancy of that regulation. Why have lung associations not been there? Why have medical associations not been there? Why have other organizations that, if notified or if they understood the implications of that regulation, would have been there, not been there? ... it [notice] has to be real notice. (March 30, 1988)

Option No. 3: Ottawa Model

That administrative practices, similar to those followed in Ottawa, be adopted. In 1986, the federal government announced its "Regulatory Process Action Plan." The Plan has Notice and Comment components, as follows:

1. Each year, a federal regulatory plan is published. Every department puts out a brief statement of its intention "either to initiate or complete a regulation" in the upcoming calendar year. (Tony Campbell, Assistant Deputy Minister, Office of Privatization and Regulatory Affairs, March 22, 1988) The objective is that no such regulation should come into effect within the following 60 days. During this period, the public is given an opportunity to express its views to designated contact persons.
2. Every new regulatory proposal that is presented to a Minister for approval, whether it be by way of statute, regulation, or some other means, must be accompanied by a regulatory impact analysis statement (RIAS). The RIAS is published with proposed regulations in The Canada Gazette Part I and with final regulations in The Canada Gazette Part II. Among other items, the RIAS describes the regulation and its anticipated impact, the alternatives that were considered, and the degree of consultation that has taken place.
3. In principle, all draft regulations must be prepublished in The Canada Gazette Part I. Final regulations cannot be made during the next 30 days. The public is advised in the Gazette on where to send submissions.

Exceptions to prepublication are justified on three grounds: (i) emergency; (ii) a cost-benefit analysis – if the cost of prepublication would exceed the benefit, then there should be no prepublication; and (iii) sensitivity of an economic, political, or intergovernmental nature.

Excerpts from the Federal Regulatory Plan 1988, The Canada Gazette Part I, and The Canada Gazette Part II are found in the Appendices.

The comprehensiveness of the federal approach is to be admired. However, a major weakness is its administrative nature. The Action Plan is not codified in any statute and, as such, its existence is very dependent on the will of the government of the day.

A bureaucracy has been created in the Office of Privatization and Regulatory Affairs to oversee the Plan. We question the desirability of such a bureaucracy with all the attendant costs. Concerns were raised by Professor Janisch, who testified:

I am not persuaded that the massive process of evaluation, the cost-benefit analysis of regulation-making and the whole bureaucracy that has been set up in the federal sphere is what this province needs at all...notice and comment can be done effectively without necessarily setting up this whole, big structure. (March 24, 1988)

Option No. 4: General Statute Model

That a statute of general application, similar to the Quebec Regulations Act, be passed. The Quebec Act, which came into force on September 1, 1986, stipulates that all proposed regulations must be published in the Gazette officielle du Québec. A notice accompanying each proposed regulation designates a person for receiving comments.

The prepublication period under the Quebec Act must be at least 45 days. A proposed regulation may be made at the expiry of a shorter period, or without having been published at all, if (i) the urgency of the situation requires it; (ii) the proposed regulation is designed to establish, amend, or repeal norms of a fiscal nature; or (iii) a reason provided for in the authorizing Act warrants the exemption. Appendix L contains a copy of the Quebec Act.

A general statute prescribes a minimum standard of public participation. It adds an element of certainty to the public's role in the regulation-making process. It means that Notice and Comment procedures cannot be weakened without the approval of the Legislature.

On the other hand, a general statute builds more formality into the regulation-making system. Extra formality may mean extra costs and undue delay in finalizing regulations. There is also the problem of drafting a comprehensive list of exceptions.

Evaluation

As the preceding discussion has shown, there is some merit in all four options:

- The statute-by-statute approach (option no. 1) gives Ministries the flexibility to introduce Notice and Comment procedures in legislation wherever appropriate and to design those procedures with a particular program in mind. However, in practice, very little has been done. The prevailing policy is not to introduce Notice and Comment provisions;
- The policies adopted by the Ministries of Labour and the Environment (option no. 2) increase public involvement. The Labour model, however, requires "identifiable clients and stakeholders." The Environment model seems to have appealed more to professionals than to the general public;
- The administrative practices followed in Ottawa (option no. 3) are very comprehensive, but do not have the binding force of legislation. In addition, a bureaucracy is needed to oversee the practices;
- A general statute (option no. 4) ensures that the public has a meaningful role to play in the regulation-making process. It does raise concerns about costs, delays, and the drafting of exceptions.

We have concluded that the concept of a general statute best meets the objective of improving public participation without impeding the efficient operation of government. The concept has been adopted not only in Quebec, but also in the United States where the Administrative Procedure Act was enacted in 1946. Ian Blue of the Canadian Bar Association testified about the U.S. Act:

I was in Washington the week before last, talking to government officials of many U.S. agencies. I asked about this rule-making procedure, and all of them were consistently praiseworthy of the process. They believe it results in better regulations. (March 30, 1988)

A general statute would not represent a radical policy for Ontario. Ministries consult with the public on an informal basis. We believe that, in large measure, our proposals would codify what many Ministries are already doing.

According to the Canadian Bar Association, a precedent for a general statute can be found in the 1971 Statutory Powers Procedure Act of Ontario. The Act prescribes procedures for tribunals. We were told that at the time of its passage:

. . . many tribunals followed those same procedures, although some did not. By enacting a statute, we had uniform law across the province. I submit that as an appropriate precedent. (Ian Blue, March 30, 1988)

Our recommendations are modelled in large part on the recommendations of the Ontario Branch of the Bar Association. The drafting of exceptions has not posed any special difficulty. One of our proposed exceptions explicitly takes the "costs" factor into account. It holds that a regulation should not be republished if the costs of doing so would exceed the benefits. Another exception would apply in cases of emergency. Thus, urgent situations can be handled without fear of delays. Delays are also minimized in that the proposed consultation period is 30 days, not 45 days as in Quebec.

Finally, we wish to address the issue of hearings on proposed regulations. We believe that, at a very minimum, a system of Notice and Comment must provide an opportunity to make written submissions. Ministries should have the discretion to conduct hearings, if they consider it appropriate. What we wish to avoid, however, is the "Peanut Butter Quagmire" where full oral trial-type proceedings are held. The Quagmire refers to the case in which the United States tried to pass regulations defining "pure peanut butter." The case was vividly described to us:

The question was, is peanut butter 98 per cent peanuts, 99 per cent peanuts or 99.5 per cent peanuts? They had years of hearings. There were 17 volumes of evidence. It went over two years, and the mistake they made was to try the issue. They had a trial as to what is peanut butter. Of course, it became a quagmire. They just disappeared into it. It was a disaster. (Professor Janisch, March 24, 1988)

RECOMMENDATIONS

1. The Ministry of the Attorney General should introduce legislation amending the Regulations Act to provide for Notice and Comment procedures that would apply to all proposed regulations, subject to certain exceptions. The Notice and Comment procedures should include the following components:
 - (a) Before making a substantive regulation, each Ministry and agency should publish a notice in The Ontario Gazette, The Ontario Reports, and any other source that the Ministry or agency considers necessary for reaching affected persons;

- (b) The notice should give a plain language summary of the proposed regulation, state the reasons for the regulation, and cite the relevant statutory authority. The text of the regulation should also be published, if considered appropriate by the Ministry or agency. If the text is not published, the public should be informed as to where copies may be obtained. An information officer would be designated in the notice;
 - (c) Members of the public should have the right to comment in writing on the proposed regulation. If the Ministry or agency regards a hearing as appropriate, one should be held to receive oral comments;
 - (d) The minimum period of time for submitting comments should be 30 days. The Ministry or agency should extend that period where, in its opinion, the length, complexity, or importance of the regulation so requires;
 - (e) After the Ministry or agency has received the comments, it must write a report. The report should summarize the comments and address the concerns that were raised. This report should be available for scrutiny by the Standing Committee on Regulations and Private Bills;
 - (f) Nonpublication or a shorter prepublication period would be justified on the basis of (1) an emergency; (2) a cost-benefit analysis; or (3) sensitivity of a financial nature (e.g. budgetary measures). The reasons for invoking these exceptions should be published in the Gazette. Procedural rules would also be exempted from the publication requirements. Further exemptions could be inserted in individual statutes;
 - (g) Failure to comply with the Notice and Comment procedures should not invalidate a regulation;
 - (h) The Standing Committee on Regulations and Private Bills should have the mandate to determine if the statutory procedures have been followed and to report thereon to the House.
2. Before introducing a bill for first reading, each Ministry should make the following determination: should the Notice and Comment procedures that would apply to regulations under the bill as a result of the amended Regulations Act be expanded upon? If so, procedures for greater consultation should be incorporated in the bill. The Ministry's review of consultation procedures should be tabled with the Cabinet Committee on Regulations in the form of a report.
 3. Each Ministry should reassess its administrative practices for consulting with the public, taking into account that the amended Regulations Act would establish a minimum standard of consultation. A report on the reassessment should be submitted to the Standing Committee on Regulations and Private Bills within one year of the adoption of this report.

4. The current system whereby designated individuals and groups receive notice of draft regulations on a particular subject should be upgraded. A formal registration system – that is, a Registry – should be devised to allow individuals and groups to register with the appropriate Ministry or agency for the purposes of receiving notice. This Registry would be part of the system for giving notice under the amended Regulations Act. Registrants should be given information about the scrutiny role of the Standing Committee on Regulations and Private Bills.
5. The Standing Committee on Regulations and Private Bills should act as a central clearinghouse of information on the effectiveness of Notice and Comment procedures.
6. Where a Ministry or agency has invoked one of the exemptions in Recommendation 1(f) and has received an objection from an individual or group to the use of the exemption, the Ministry or agency should (a) review the use of the exemption with a view to assessing its reasonableness and (b) advise the Standing Committee on Regulations and Private Bills of the objection and its response thereto.
7. Upon receiving notice of an objection to the use of an exemption, the Regulations Committee should assess whether or not the use of the exemption was reasonable in the circumstances. Under Recommendation 1(h), the Committee would be empowered to report to the House on the appropriate or inappropriate use of an exemption.

III DISALLOWANCE

The Concept

The concept of disallowance denotes the power of legislators to vote the repeal of regulations. Currently, Members of the Legislative Assembly may pass a resolution stating that a regulation should be revoked. A resolution, however, does not have any binding effect. It is still up to the regulation-making authority (usually the Cabinet) to actually revoke the regulation. As Professor Janisch told the Committee:

... a resolution of the House is not a statute and therefore does not override the regulation. The regulation still stays in existence. Then you [can] have this awkward situation where you have an impugned regulation and a resolution of disallowance, yet the regulation has not been actually struck down. (March 24, 1988)

In a similar vein, François Bernier, Senior Counsel to the Standing Joint Committee on Regulatory Scrutiny, said that:

The House, otherwise than by legislation, cannot change or repeal existing law. (March 22, 1988)

Significance of the Disallowance Power

The Committee considers the power of disallowance to be essential. The "essential" nature of this power as a means of affecting events was emphasized by Graham Eglington, former counsel to the Standing Joint Committee on Regulations and Other Statutory Instruments (now called the Committee on Regulatory Scrutiny). Noting that "politics is about power," Eglington testified that:

As far as disallowance is concerned, I make no bones about the fact that I have always thought the power of disallowance is essential, for the very simple reason that politics is about power. Nobody who is sitting on this committee would be bothered to be in the Legislature or sitting on committees if there was no opportunity or access to power. That is what politics is all about. The power is not only gained in the ministerial preferment, although of course everybody who goes into politics, or

almost everybody, wants that too. The power is an opportunity to affect events, and that is what the power of disallowance gives. [emphasis added] (March 23, 1988)

Eglinton then highlighted the two ways in which events could be affected by a disallowance power. First of all, the Legislature would be able to overrule the executive and, in effect, throw a regulation "out the window." Secondly, the ordinary member would be allowed to create "a real dust-up" about a particularly offensive regulation. He elaborated:

... it gives the opportunity for the Legislature to exert itself and overrule what the executive has done. That is number one ... it does create a theoretical possibility for the Legislature to say to the executive, "This particular regulation is so offensive that we are throwing it out the window."

The other opportunity to affect events it gives to the ordinary member is that it allows him to create a real dust-up about a particular offensive regulation. Even if there is no hope of actually having the Legislature vote the regulation down – disallow it – it does allow the ordinary MPP to stand up in his place and take advantage of whatever opportunities there are in the rules to bang on and on about a particular regulation, probably in front of a very primed press gallery, and get some publicity for the outrageous nature of the regulation. Unless you have some sort of mechanism by which an ordinary MPP can raise a regulation on the floor of the assembly, that opportunity to affect events by attracting publicity is missing. (March 23, 1988)

Parliamentary committees in other jurisdictions in Canada and elsewhere have recognized the "essential" nature of the disallowance power. In 1980, the federal Regulations Committee in its Fourth Report stated that "a power in the Houses, soberly used, to disallow subordinate legislation, is essential in Canada..." Three years later, a Special Committee of the National Assembly of Quebec saw disallowance as an essential component of parliamentary control over regulations. Formally known as the Study Committee on Parliamentary Control of Delegated Legislation, the Committee distinguished in its Report between the power to recommend and the power to disallow:

Although empowerment to tender recommendations enhances the prospects for achieving positive outcomes through persuasion and negotiation, it can prove

inadequate and overly conciliatory in practice. The power to disallow therefore constitutes an essential element of effective parliamentary control over delegated legislation.

This Committee agrees that the power to recommend can prove "inadequate". In a report, we can recommend, for instance, that a regulation be amended or revoked, or that a statute be amended to authorize a regulation. However, there is no guarantee of a debate or vote on the report. Our recommendations have "no teeth"; they are not binding on anyone.

Other Jurisdictions

As part of its examination of the disallowance power, the Committee reviewed procedures in other jurisdictions. These procedures are summarized below. The relevant documents are contained in the Appendices to this report.

Canada

Under the Standing Orders of the House of Commons, the Standing Joint Committee for Regulatory Scrutiny is empowered to make a report to the House containing a resolution that a specified regulation be disallowed. If the report is concurred in, the resolution becomes an order of the House to the Ministry concerned to rescind the regulation.

The report may be adopted by the House of Commons in two ways: (1) by means of a vote; and (2) by means of a "deeming" procedure. The "deeming procedure" works as follows:

Once the report is tabled, a notice of motion for concurrence must be placed on the Notice Paper immediately. If the motion is not disposed of within the next 15 sitting days, it is deemed to have been moved and adopted by the House.

The debate on the motion cannot exceed one hour. It can only be requested by a Minister.

An advantage of the federal procedure is that it requires the House to act on the Joint Committee's report; otherwise, the "deeming" procedure will come

into play. A major disadvantage, however, is the absence of legislation equating concurrence in the report with the repeal of the regulation in question. Bernier confirmed that:

...it is not a binding procedure. In a sense, it is consensual or voluntary, whereby the government says to the House in effect, "Should you adopt an order or order us to rescind or revoke a regulation, we will abide." The commitment, of course, is political because there is no legislative foundation to the procedure. (March 22, 1988)

This disallowance power was invoked for the first and only time in February 1987. The Joint Committee moved that the Fruit, Vegetables and Honey Regulations be revoked. Almost three years earlier, the Committee reported that it had found these Regulations to be ultra vires; the Department of Agriculture concurred in that opinion. In other words, there was apparently no authority in the Fruit, Vegetables and Honey Act to make the Regulations.

The Committee's Report was not concurred in by the House; instead it was referred back to the Committee for further consideration. Bernier recounted what happened behind the scenes:

What happened in the House, of course, is the normal political process of a number of interest groups contacting their members. It was soon realized that should the minister request a debate and should it come to a vote, the committee's report would not be accepted by the House. In that instance, the better part of valour was for the committee to accept that the report be referred back to the committee for further study rather than face a case of the House of Commons of Canada, by implication at least, supporting the application of the illegal regulations by the government. (March 22, 1988)

Quebec

The Quebec Regulations Act states that the National Assembly may, in accordance with its standing orders, vote the disallowance of any regulation. The Act further states that the disallowance of a regulation has the same effect as the repeal of the regulation.

These provisions have yet to be invoked. Michel Leclerc of the Quebec Regulations Office put forward seven hypotheses to explain their non-use. They included both the fact that the Act was new and the opportunity for Members to make recommendations directly to the relevant Minister. (March 15, 1988)

A strength of the Quebec Act is the clear statement that the disallowance of a regulation means the repeal of the regulation. The Act, however, fails to require the Assembly to act on a motion for disallowance. There is no kind of "deeming" procedure. The Act also fails to assign a role to a Regulations Committee. A role, though, is not possible until Quebec establishes such a Committee.

Saskatchewan and Manitoba

The Regulations Acts of Saskatchewan and Manitoba prescribe almost identical procedures for disallowing regulations. The Assembly passes a resolution that either "disapproves" a regulation or requires it to be amended. When a copy of that resolution is received by the authority making or recommending the regulation, the Minister or the Cabinet, as the case may require, "shall revoke the regulation in whole or in part or amend it as required by the resolution."

Neither province has ever used this procedure. In his submission to this Committee, Counsel to Saskatchewan's Special Committee on Regulations wrote that "it is our experience that the Administration generally co-operates with the [Committee's] recommendations . . ." (Dale Canham, March 23, 1988)

A noticeable omission from these Regulations Acts is a provision on the role of the Regulations Committee in the disallowance procedure.

Australia

In Australia, disallowance procedures are prescribed at both the federal and state levels. The federal Acts Interpretation Act 1901, as amended, contains what Eglington contends is the "most complete mechanism in existence." It is a mechanism which has been refined over a period of 50 years. The features which we consider appropriate for Ontario hold that:

- (a) If the House passes a resolution disallowing a regulation, the "regulation so disallowed shall thereupon cease to have effect." The disallowance of a regulation "has the same effect as a repeal of the regulation."
- (b) If the disallowance motion is not disposed of within 15 sitting days, the regulation is deemed to have been disallowed.
- (c) During the six months after disallowance, "no regulation, being the same in substance as the regulation so disallowed" can be made. There is one exception. The House in which disallowance occurred may approve the making of a substantially similar regulation within the six months.

Eglington pointed out that disallowance was exercised by the Senate, "which is elected, which is very powerful, and where the government hardly ever has a majority." He continued:

... they have got to the situation now where, as soon as a motion for disallowance goes in, the government gives up, throws in its hand and the regulation is revoked. They have not actually had to disallow anything since 1971. (March 23, 1988)

One problem with Australia's scheme is that a whole regulation must be disallowed. It should be possible to disallow part of a regulation.

Conclusion

We propose that a statutory procedure for the disallowance of regulations should be established. A statute should codify what we consider to be an essential component of parliamentary control over the regulatory process.

Our recommendations are based largely on the procedures in Ottawa and Australia. The following provisions are crucial: (1) it must be stipulated that the disallowance of a regulation means the repeal of the regulation; and (2) there must be some mechanism to force a vote on a motion for disallowance after the House has had a reasonable period of time to consider the motion. Otherwise, the disallowance power will have the impact of what Eglington termed an "empty thunderbolt." The first provision – the equation of disallowance with repeal – necessitates a procedure that is at least partly statutory. (Our proposals also include amendments to the Standing Orders.)

The Committee wishes to emphasize that the power to disallow should be seen as a measure of last resort to be used sparingly. It should only be used after Ministry officials (including the Minister and Deputy Minister) have had an opportunity to appear before the Committee and explain why the regulation in

dispute should remain in force. In practice, the disallowance power would not be invoked, unless an earlier recommendation in a Committee report to repeal the regulation or amend the authorizing statute had been ignored.

Under our proposals, ordinary MPPs will have the power to initiate disallowance proceedings by means of the Regulations Committee. Such proceedings should not be treated as a matter of confidence by the Government.

RECOMMENDATIONS

8. The Regulations Act should be amended to add procedures for the disallowance of regulations. The amendments must include the following provisions:
 - (a) The Standing Committee on Regulations and Private Bills should be empowered to make a report to the House containing a resolution that a specified regulation, or part thereof, be disallowed;
 - (b) Once the report has been tabled, a vote must be held within the next 20 sitting days. Otherwise, at the expiry of the 20 days, the report will be deemed to have been adopted;
 - (c) Upon the adoption, or deemed adoption, of the report, the regulation in question shall cease to have effect;
 - (d) The adoption, or deemed adoption, of the report has the same effect as the repeal of the regulation.
9. The Standing Orders should be amended to specify that:
 - (a) before submitting a disallowance report to the House, the Standing Committee on Regulations and Private Bills must afford officials of the Ministry concerned (including the Minister and Deputy Minister) the opportunity to appear before the Committee to explain the regulation in question;
 - (b) the debate on a motion for adoption of a disallowance report must not exceed one hour;
 - (c) the motion for adoption of the disallowance report should not be seen as a question of confidence in the Government.

(All our recommendations for amendments to the Standing Orders should be referred by the House to the Standing Committee on the Legislative Assembly under Standing Order 90(h).)

IV

MANDATE OF THE STANDING COMMITTEE
ON REGULATIONS AND PRIVATE BILLS

Current Terms of Reference

A Standing Committee on Regulations was established in 1969 by means of an amendment to the Regulations Act. Section 12 was added to the Act; the section has not been amended since. The amendment of 1969 stated that every regulation stands permanently referred to the Committee which:

...shall examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes . . . (s. 12(3))

The Standing Orders of the Legislative Assembly list guidelines for the Committee to consider when reviewing regulations. They read:

1. Regulations should not contain provisions initiating new policy, but should be confined to details to give effect to the policy established by the statute;
2. Regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties;
3. Regulations should be expressed in precise and unambiguous language;
4. Regulations should not have retrospective effect unless clearly authorized by statute;
5. Regulations should not exclude the jurisdiction of the courts;
6. Regulations should not impose a fine, imprisonment or other penalty;
7. Regulations should not shift the onus of proof of innocence to a person accused of an offence;
8. Regulations should not impose anything in the way of a tax (as distinct from fixing the amount of a licence fee, or the like); and
9. General powers should not be used to establish a judicial tribunal or an administrative tribunal.

(Standing Order 90(j))

Proposed Changes

The principle of accountability clearly underlies our proposed changes to the Committee's mandate. This principle operates on two levels: (1) the Legislature is accountable to the electorate for the scrutiny of regulations and (2) the exercise of regulation-making powers must be held accountable to the Legislature.

Canadian Charter of Rights and Freedoms

The Hon. John Godfrey was "amazed" to learn that the Committee's guidelines did not include conformity with the Charter of Rights. A former joint chairman of the Regulations Committee in Ottawa, he told this Committee that:

I just take it for granted it should be there . . . There is just no question that it should be in. It is so fundamental. (March 23, 1988)

We are in complete agreement with Godfrey's characterization of this guideline as "fundamental." All regulations must comply with the Charter of Rights; regulations that contravene the Charter are of "no force or effect." (Constitution Act, 1982, ss. 32 and 52)

We note that one of the criteria for the scrutiny of regulations by the federal Regulations Committee is compliance with the Charter. We also note that, on a provincial level, the Office of the Registrar of Regulations applies this guideline to draft regulations. In Ottawa, a similar exercise occurs in the Privy Council Office.

We reject the position that Charter matters should be left entirely to the courts. These matters should not be left solely to the chances of litigation in the courts, with all the attendant costs. The Legislature does have a responsibility for all the laws it makes or authorizes to be made. Professor William Bogart expressed our views when he said that:

. . . I believe the Legislature and its emanations have at least as much to say as the courts regarding the Charter. (March 24, 1988)

RECOMMENDATION

10. Standing Order 90(j) of the Legislative Assembly should be amended to add a guideline no. 10 which would read: "Regulations should be in conformity with the Canadian Charter of Rights and Freedoms."

Unusual or Unexpected Use

Regulations Committees have been established in four Canadian jurisdictions: Canada (federal), Ontario, Saskatchewan, and Manitoba.* A guideline for every Committee, except Ontario's, is whether a regulation makes an "unusual or unexpected" use of delegated power.

Other examples of the use or recommended use of this guideline are:

- In 1968, the Ontario Royal Commission Inquiry into Civil Rights (the McRuer Commission) recommended that the Legislature establish a Regulations Committee. One of the proposed guidelines for the Committee was that regulations should not make any "unusual or unexpected use" of delegated power. Every other guideline recommended by the Commission has been adopted;
- The Office of the Registrar of Regulations considers this guideline before approving a regulation;
- The information sheet accompanying the draft regulations that are submitted to the Cabinet Committee on Regulations asks if there is an "unusual or unexpected use" of delegated power. If the answer is "yes", an explanation is required;
- In Ottawa, the Privy Council Office applies the guideline to proposed regulations.

Former Senator Godfrey saw this guideline as "very important" and we concur.

RECOMMENDATION

11. Standing Order 90(j) should be amended to add a guideline no. 11 which would read: "Regulations should not make any unusual or unexpected use of delegated power."

*It has been years since Manitoba's Standing Committee on Statutory Regulations and Orders met (and apparently it only met once) to review regulations. Nevertheless, the Committee still has the mandate, on paper at least, to examine regulations. It has been reappointed every legislative session to study other matters.

Regulatory Process

The Committee's examination of the regulatory system in Ontario and in other jurisdictions goes back several years. This kind of examination is implicitly authorized in the Committee's terms of reference. More specifically, implied authorization can be found in section 12(3) of the Regulations Act which requires the Committee to "examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power." Section 12(3) also says that the Committee "shall deal with such other matters as are referred to it from time to time by the Assembly."

We heard testimony that, since 1979, an order of reference has authorized the Joint Committee in Ottawa "to study the means by which Parliament can better oversee the government regulatory process. . ." The same kind of order should be incorporated in this Committee's terms of reference. It would formalize our longstanding practice (admittedly, an interrupted practice) of studying the regulatory process.

We are the most logical body to assume this responsibility. We have the expertise on the regulation-making system and, indeed, if Recommendation 5 is adopted, the Committee will act as a central clearinghouse of information on the effectiveness of Notice and Comment procedures.

RECOMMENDATION

12. The Regulations Act or the Standing Orders should be amended to explicitly authorize the Standing Committee on Regulations and Private Bills to study the effectiveness of the regulation-making system in Ontario and in other jurisdictions.

Merits

We believe that Committees of the Legislature should be empowered to examine the merits of regulations; however, we do not believe that it is the role of this Committee to review policy. We do not have the necessary expertise. In addition, a "merits" jurisdiction would probably compromise the nonpartisanship of the Committee. We regard nonpartisanship as a main component of our credibility.

On the topic of a "merits" jurisdiction, Professor Janisch in his brief to the Committee stated:

I believe that it would side track the Committee from its important work; would call for a degree of institutional competence not to be found in the Committee; and would inevitably bring the Committee into conflict with responsible ministers and Cabinet itself. (March 24, 1988)

We approve of the approach that has been adopted in Ottawa and Quebec, whereby Standing Committees, of their own motion, can review regulations on the merits. For instance, Standing Order 96(2) of the House of Commons states that:

...In general, the committees, [except for certain committees, such as the Regulations Committee] shall be severally empowered to review and report on:

(a) the statute law relating to the department assigned to them;

* * * *

(e) other matters, relating to the mandate, management, organization or operation of the department, as the committee deems fit.

Standing Order 120 of the National Assembly of Quebec begins:

Of their own motion, the committees examine

(1) draft regulations and regulations;

* * * *

A similar Standing Order for Ontario would help to overcome what might be termed a near-total "procedural abdication" of merits review. Currently, procedures for looking at the policy of a regulation are basically confined to questions in question period or during consideration of a Ministry's estimates in Committee.

The principle of accountability means that some legislative body should be looking at the policy side of regulations. The time and expertise required make Standing Committees the appropriate forum.

RECOMMENDATION

13. The Standing Orders should be amended to authorize Standing Committees, of their own motion, to review the merits of regulations.

Enabling Clauses

Effective parliamentary scrutiny of regulations requires the systematic examination of enabling clauses – that is, the clauses of bills which confer regulation-making powers. In general, Members and Committees pay little attention to enabling clauses. Former Senator Godfrey pinpointed the problem:

...the enabling clauses are usually overlooked by committees... They do not have the expertise; they are not interested; they do not realize the importance. (March 23, 1988)

Godfrey provided a vivid illustration of the problem:

I can remember when I was on a Senate committee on banking, trade and commerce looking at some tax treaty bills. The bill that was actually before the committee had the power to make a regulation which, in effect, could increase taxes, which is contrary to everything. There is no way that you should be able to increase taxes by regulation. My God, this had been in something like five or six previous bills, confirming these tax increases, but nobody noticed it, because nobody was thinking about it. Because of my background, I saw it and brought it up and the government immediately amended the bill. (March 23, 1988)

We were told by Eglington that the review of enabling clauses has been very successful in Australia, where it has been tried on a systematic basis. The emphasis there is solely on the "legality and propriety" of the enabling clauses. (March 23, 1988)

Our objective is not to make a final determination of the validity of these clauses. We wish only to alert the Committees which are actually considering the bills in question. They, in turn, can ask the government for the reasons justifying the powers in dispute.

At the federal level, this framework was suggested to the Senate by Godfrey in December 1984. Godfrey moved unsuccessfully that the Joint Committee on Regulations be authorized to review enabling clauses which were couched in unnecessarily wide terms. Examples of such powers were then listed. Our recommendations on enabling clauses are based, in part, on Godfrey's motion. They include a recognition that enabling clauses cannot be assessed adequately, unless the whole bill is referred to the Regulations Committee for that purpose.

RECOMMENDATION

14. The Committee's mandate in the Regulations Act should be expanded beyond the review of regulations to include enabling clauses in bills. The Committee should advise the Standing Committee considering a bill whether or not the enabling clauses contain overly broad or vague enabling powers. Examples are (a) clauses which confer the power to amend the enabling Act by regulation ("King Henry VIII" clauses) and (b) the excessive reliance on clauses authorizing "any other regulations as are required to bring this act into effect" ("basket" clauses). In order to adequately assess the enabling clauses in a bill, the whole bill will have to be referred to the Committee. We reiterate that the Committee would not be reviewing matters of policy.

Bills and the Canadian Charter of Rights and Freedoms

Should the Regulations Committee assess not only the enabling causes of bills, but also whether or not bills comply with the Charter of Rights? This question was raised by former Senator Godfrey who answered "yes", with one qualification. Godfrey did not see this Committee as actually deciding whether or not a bill infringed the Charter. It would merely alert the Committee examining the bill of the possibility of an infringement. The "alerting" function would be similar to that regarding enabling clauses. Godfrey elaborated:

... if you look into the Charter of Rights and Freedoms as far as regulations are concerned, [you] would have the expertise, or your counsel would have the expertise, to look at bills and alert other committees, saying: "Don't overlook this. It is up to you to decide. We are not going to decide, but we just want to draw your attention that there is a question here." (March 23, 1988)

In December 1984, Godfrey moved that the mandate of the federal Regulations Committee be expanded in this way. The Senate agreed, but the approval of the House of Commons was never obtained. The Department of Justice had opposed the motion on the ground that it had the duty to check for compliance with the Charter. Godfrey had told the Senate:

It was the view of that department that additional scrutiny of bills was not necessary and that it would be a nuisance if the legislative body got involved in it. (December 11, 1984)

We do not accept the position that legislative involvement would be a "nuisance". We agree with Godfrey that if we are authorized to examine regulations for compliance with the Charter, we will develop expertise in Charter matters. That expertise should be extended to the scrutiny of bills for possible infringements of the Charter. It must be emphasized that we would only be alerting the Committee studying the bill in question of possible infringements.

We do not view this kind of scrutiny as a policy function. It is a function, however, that in combination with the review of enabling clauses will require the hiring of full-time counsel, who must be independent of the Government.

RECOMMENDATIONS

15. The Committee's mandate in the Regulations Act should be extended to include the scrutiny of bills for compliance with the Canadian Charter of Rights and Freedoms. The Committee should advise the Standing Committee considering a bill of possible contraventions of the Charter.

16. If the Committee's jurisdiction is expanded in accordance with Recommendations 14 and/or 15, the Committee should be renamed the Standing Committee for the Scrutiny of Bills and Regulations. Full-time counsel should be retained to assist the Committee. A separate Standing Committee on Private Bills may or may not be necessary.

Policy Directives

Policy directives have been dubbed "administrative quasi-legislation". A less legal description is "law which is not law". These directives are law in the sense that the policies are firm and established; they are not law when one considers that generally they are not available for public scrutiny. Unlike formal regulations, they are not published in The Ontario Gazette.

The Committee does not question the need for policy directives. (Our definition of "policy directives" includes policy statements, manuals, guidelines, and policies.) What we do find offensive is their secrecy. We endorse completely the McRuer Commission's conclusion of 20 years ago:

It is an unjustified encroachment on the rights of the individual to be bound by an unpublished law.

A classic example of "secret" law involved the Workers' Compensation Board in an earlier period. What we heard can only be described as "scandalous":

... it was discovered that the Workers' Compensation Board was saying it was operating under its statute and its regulations, whereas in reality there was literally a huge pile of manuals that were dispositive of how claims to workers' compensation were dealt with and these were all literally in the bottom drawer.

You went and argued a workers' compensation claim and the adjudicator sat and nodded and said, "That's a nice argument" and then when you walked out of the room he went to the bottom drawer, pulled out the manual, looked up section whatever it was and said, "There's the decision I am bound by." They never conveyed that information to you. You did not have access to the manual. That was quite a scandalous situation. (Professor Janisch, March 24, 1988)

We believe strongly that policy directives of a legislative nature should be published in The Ontario Gazette and should be subject to this Committee's scrutiny. These twin objectives can be achieved by amending the definition of "regulation" in the Regulations Act. As pointed out earlier, all "regulations" must be published in the Gazette and all "regulations" stand permanently referred to this Committee.

Currently, the statutory definition of "regulation" speaks of a "regulation, rule, order or by-law of a legislative nature". We wish to replace the words "of a legislative nature" by the words "or any other document made in the exercise of a legislative power, including policy directives." The controlling word is "legislative"; any rule of general application will be captured by it. By amending the definition of "regulation" in this way, the legal significance of policy directives of a legislative nature will be clearly recognized.

The McRuer Commission also favoured a wider definition of "regulation":

The definition of "regulation" should be expanded to include as far as possible all regulations, rules or by-laws that make law affecting the public, except municipal by-laws . . . The expanded definition should include all rules made in the exercise of sub-delegated power.

It is not our intention to hamper the Government in carrying out its administrative responsibilities. Accordingly, our expanded definition of "regulation" would apply only to policy directives of a "legislative", as opposed to "administrative", nature. We are aware that, in this context, the meaning of "legislative" may not be that clear. Indeed, former Counsel to the Committee, Lachlan MacTavish, described the words "of a legislative nature" which appear in the current definition of "regulation" as a "slippery phrase." But, he added:

No one yet has come up with a better phrase to cover the part of the waterfront we wish to cover and to let out the stuff they do not think is in the public interest to require to be filed, published and so on. (Standing Committee on Regulations and Other Statutory Instruments, April 29, 1982)

MacTavish's comments apply to our proposed definition. The word "legislative" denotes better than any other word the kind of policy directive we wish to capture by the expanded definition of "regulation" – that is, a directive that affects the public at large (or, as mentioned above, "any rule of general application.") Ministries may wish to request our assistance in determining what constitutes a "regulation."

One clear example of a policy directive of a legislative nature may be seen in a recent government bill – Bill 88, the Truck Transportation Act, 1987 (1st Reading, December 17, 1987). Section 37(1) of the Bill provides that:

The Lieutenant Governor in Council may issue policy statements setting out matters to be considered by the [Ontario Highway Transport] Board when determining questions of public interest and the Board shall take the statements into consideration together with such other matters as the Board considers appropriate.

We note that section 37(2) expressly requires that every such policy statement be published in The Ontario Gazette. We wish to repeat that by amending the definition of "regulation" to include this kind of policy directive, greater clarity is given to the directive's legal significance.

RECOMMENDATION

17. The definition of "regulation" in section 1(d) of the Regulations Act should be amended to read: "'regulation' means a regulation, rule, order, by-law, or any other document made in the exercise of a legislative power, including policy directives, policy statements, manuals, and guidelines . . . "

Meetings between Sessions

Under the Regulations Act and the Standing Orders, the Committee does not have the authority to sit between sessions. Regulations, however, are filed continuously throughout the year with the Registrar of Regulations. They are published every week in The Ontario Gazette. As a result, it is possible that the Committee may wish to consider a recent regulation (or even an older one), and be barred from doing so for weeks or months.

If our mandate is expanded in accordance with the preceding recommendations, we will have to meet more frequently. An inability to sit between sessions will make it difficult to fulfill the expanded mandate.

RECOMMENDATION

18. The Regulations Act and the Standing Orders should be amended to authorize the Committee to sit not only during sessions, but between sessions as well.

Relationship with Cabinet Committee on Regulations

The Cabinet Committee on Regulations is a committee of Cabinet that examines regulations before they are made or approved by the full Cabinet. The Committee does not approve or reject regulations; rather, it makes recommendations to Cabinet.

Unlike the Standing Committee on Regulations, the Cabinet Committee is concerned primarily with policy. The Hon. Gregory Sorbara, the Chairman of the Cabinet Committee on Regulations, testified that:

What we do, because we are politicians, is look at the political side of it. . . [We] review the political implications, not check the wording to make sure that clause (a) is a logical precedent to clause (b). We have to understand what this means for public policy. . .
(March 31, 1988)

Because our mandate is so different from that of the Cabinet Committee's, some kind of working relationship between the two Committees may not be realistic. However, there is some overlap in the work of the Committees. Both consider the issue of statutory authority for regulations. Coordination on this level might be possible.

V

AMENDMENTS TO THE REGULATIONS ACT

In previous chapters of this report, we have recommended what might be called "policy" amendments to the Regulations Act. This chapter focuses on changes to the Act that are generally more "technical" than policy-oriented. Nevertheless, policy considerations do underlie our proposals.

Background

The Regulations Act came into force on July 1, 1944. Since that date, it has been amended some 11 times – most recently, in December 1969. Notwithstanding these amendments, the basic principles of the Act have remained unchanged. These principles require the central filing and "gazetting" of all regulations of a legislative nature.

Most of the amendments to the Act have been to the definition of "regulation." They have excluded from the Act regulations considered not to be of a legislative nature, as well as regulations which are required to be filed and recorded elsewhere.

We wish to emphasize that some of the issues which follow were first raised 10 years ago in our First Report 1978 (pp. 22–31 and 49–51) and were most recently discussed in our Special Report 1988 (pp. 11–14). We point out that Recommendations 19 and 22, and parts of Recommendations 21, 23, and 24 go back to the 1978 report.

Section 1: Definition of Regulation

Exceptions

The definition of "regulation" in section 1 of the Act contains several exceptions. Other Acts, however, also list exceptions to the Regulations Act. For instance, the Ambulance Act states:

- 4(2). The Regulations Act does not apply to anything done by the Minister under subsection (1). [Subsection 1 sets out the functions of the Minister.]

The Highway Traffic Act says:

109(8). A designation [of a construction zone] under subsection (7) is not a regulation within the meaning of the Regulations Act.

Another example is found in the Telephone Act:

22. The Regulations Act does not apply to any order, regulation or by-law made under the authority of this Act.

Altogether, we have located exemptions in over 20 statutes. Various reasons have been suggested for the making of these exemptions. They include:

. . . a regulation should be exempted [1] if it is not of general public interest; [2] if it is on file elsewhere and easily available for public inspection; [3] if it might be necessary to act quickly, as in an emergency; [4] if the bulk of the material involved outweighs the benefits to the public by filing, and so on. (Standing Committee on Statutory Instruments, First Report 1978)

As a result of all the exemptions in other Acts, an overall picture of the scope of the Regulations Act is impossible to obtain without considerable research. A consolidation was supported by Professor Janisch:

. . . it would be desirable to consolidate those matters into a single Regulations Act. I think it simply adds confusion when you have a higgledy-piggledy collection of exceptions in other acts, and I am not sure that it is really necessary. (March 24, 1988)

RECOMMENDATION

19. All the exemptions from the Regulations Act should be consolidated in section 1 of the Act.

Inclusions

There are a few Acts which specifically declare that the Regulations Act applies to certain regulations thereunder. For example, the Ombudsman Act states:

- 16(2). All rules made under this section shall be deemed to be regulations within the meaning of the Regulations Act. [Section 16(1) empowers the Assembly to make general rules for the guidance of the Ombudsman.]

This kind of provision puts to rest any doubt as to the status of such rules. However, we believe that it belongs more appropriately in the Regulations Act. It should be possible to look at the Regulations Act and determine its scope without researching the statutes of Ontario.

RECOMMENDATION

20. Declarations in other Acts that the Regulations Act applies to specific regulations should be consolidated in section 1 of the Regulations Act.

Note: Another recommendation pertaining to section 1 (Recommendation 17) was proposed earlier on p. 35. It would expand the definition of "regulation" to include policy directives of a legislative nature.

Sections 3 and 5: Coming into Force of Regulations

Section 3 of the Regulations Act holds that, unless otherwise stated in it, a regulation comes into force on the day it is filed with the Registrar of Regulations. However, there is no requirement that the public be given notice of the regulation immediately. Indeed, section 5(1) requires only that the regulation be published in The Ontario Gazette within one month of its filing.

The Committee considered an amendment to the Act that would declare that a regulation should not come into force until its publication in the Gazette. We were concerned that an individual could be prosecuted for violating an unpublished regulation. We have concluded, however, that section 5(3) offers sufficient protection to the individual. It reads:

A regulation that is not published is not effective against a person who has not had actual notice of it.

Section 6: Powers of the Attorney General

"Down with that section!" These words were former Senator Godfrey's first comments on section 6 of the Regulations Act. Under the section, the Attorney General is empowered, among other things, to "determine whether a regulation, rule, order or by-law is a regulation" within the meaning of the Act. "His decision is final." (s. 6(a)) Godfrey encouraged the Committee to "really lambaste that section." He was furious:

. . . He [the Attorney General] eliminates the courts. He is above the Supreme Court of Canada. I could not believe it when I read that. I think you should really lambaste that section of the act. Why the hell should the minister decide whether it is a regulation? If it is a regulation, you should be able to go to court if you are a citizen. (March 23, 1988)

Section 6 gives the Attorney General another power which we feel is far too broad in scope. The Minister may "determine any matter that may arise in connection with the administration" of the Act. (s. 6(c)) We understand that neither this power nor any of the other powers contained in section 6 has ever been exercised.

RECOMMENDATION

21. Section 6 of the Regulations Act should be amended to eliminate the power of the Attorney General to determine what constitutes a "regulation." The remainder of the section should be re-enacted to limit the Minister's powers to what is required in order to administer the act.

**Section 7 (of the Regulations Act) and Sections 1, 5, and 8 of Regulation 899:
Powers of Registrar of Regulations**

The Office of the Registrar of Regulations does much more than serve as the filing and publishing office for regulations. Additional functions outlined in papers by Senior Legislative Counsel and Deputy Senior Legislative Counsel that were distributed to the Committee include:

1. The Office is the central drafting office for all regulations. It endeavours to ensure that all regulations conform to certain guidelines.
2. The lawyers in the Office are aware of general government policies and are in a position to recommend inter-ministerial consultation.
3. The Office ensures that there is a uniform drafting style for regulations.
4. The Registrar and his/her staff act as counsel to the Cabinet Committee on Regulations. Among other duties, they advise the Committee in relation to the drafting of a regulation and the statutory authority for making the regulation.*

These functions are nowhere stated in the legislation which establishes the Registrar's Office – section 7 of the Regulations Act. The section uses very general language. For instance, it says that:

(b) [the Registrar] shall exercise such powers and perform such duties as are vested in or imposed upon him by this Act, the regulations made hereunder, or the Minister.

We believe that section 7 should be rewritten to state the Registrar's current functions more accurately. We are also concerned about the "apparent" right of the Attorney General to vest powers in the Registrar. (We use the word "apparent" since the Act does not explicitly give the Attorney General that right.) The powers of a public official should not be prescribed by a Minister. Neither should they be prescribed by the regulations. As we concluded in our First Report 1978:

. . . the powers of a public official are of sufficient importance that they should be passed upon by the Legislature itself. To ensure this result, the powers of subordinate bodies, officials, etc. should be specified in the Act, and we so recommend.

* Donald Revell, "Rule-Making in Ontario", 1982; Sidney Tucker, "Regulations and the Legislative Process", 1988.

We wish to reaffirm this statement of 10 years ago. Accordingly, the powers (as opposed to the administrative duties) of the Registrar which are prescribed in Regulation 899 should be transferred to the Regulations Act. Three sections of the Regulation are involved: section 1, which says that the "Registrar shall advise upon and assist in the preparation of regulations"; section 5, which allows the Registrar to correct errors and make editorial changes; and section 8, which allows the Registrar to designate a person to act on his or her behalf.

RECOMMENDATIONS

22. Section 7 of the Regulations Act should be rewritten to state the current functions of the Registrar of Regulations more accurately.
23. Section 7 should not authorize the vesting of powers in the Registrar by regulation or by the Minister. This amendment requires that section 10(1)(a) of the Act be amended, as well, to allow the Lieutenant Governor in Council to prescribe duties only, and not powers, of the Registrar.
24. Sections 1, 5, and 8 of Regulation 899 should be transferred to the Regulations Act.

Independence of the Office of Registrar of Regulations

The Registrar is accountable to Senior Legislative Counsel who, in turn, reports to the Deputy Attorney General. Employees of the Registrar's Office are employees of the Office of Legislative Counsel and, as such, are paid by the Ministry of the Attorney General. The Registrar explained that:

Although technically we report to the Ministry of the Attorney General, we are physically disassociated from it and we operate as an independent body. . . We will not discuss with anyone from the Attorney General's ministry any matter in our office, nor in fact even a government matter. (Russell Yurkow, March 21, 1988)

The Committee debated whether the Registrar's Office should be completely separate from the Ministry of the Attorney General. One option would require the Registrar's Office to report to the Clerk of the House.

We have concluded that the existing reporting structure does not compromise the independence of the Registrar. The Office of the Attorney General is unlike that of any Ministry. The Office is accountable politically, but required to be aloof from partisan politics. The McRuer Commission defined the Attorney General's unique role:

. . . he [the Attorney General] must of necessity occupy a different position politically from all other Ministers of the Crown. As the Queen's Attorney he occupies an office with judicial attributes and in that office he is responsible to the Queen and not responsible to the Government.

This passage reinforced an earlier statement by the Commission that:

Historically and traditionally [as the chief law officer of the Crown] . . . the holder of the office must exercise a degree of independence quite different from that required of any other member of the Cabinet.

Section 22 of the Interpretation Act

The Interpretation Act contains a general regulation-making power in section 22. It reads:

The Lieutenant Governor in Council [1] may make regulations for the due enforcement and carrying into effect of any Act of the Legislature and, where there is no provision in the Act, [2] may prescribe forms and [3] may fix fees to be charged by all officers and persons by whom anything is required to be done.

Currently, only one regulation (Regulation 537) is in force under this section. It prescribes certain fees under five Acts: the Ambulance Act; the Business Corporations Act; the Hospital Labour Disputes Arbitrations Act; the Labour Relations Act; and the Liquor Control Act. Regulation 537 is reproduced in Appendix R.

The question arises as to why section 22 was inserted in the Interpretation Act at all. The section has nothing whatsoever to do with interpretation. Why was it not inserted in some other Act? Former Counsel to the Regulations Committee, Lachlan MacTavish, commented seven years ago:

I might say that the reason it is in the Interpretation Act, where it does not fit at all, is that historically the Interpretation Act has been or was years ago — 120 years ago on down through time — the catch-all. When nobody knew where to put a provision and it did not warrant an act of its own, it was put in the Interpretation Act. That is why this is here. (Standing Committee on Regulations and Other Statutory Instruments, May 21, 1981)

An issue for this Committee is whether or not the section should be transferred to another statute. Another option is the outright repeal of the section.

In May 1981, the Committee concluded that the section should be repealed. However, a week later, it recommended that the section should be retained, but it should be moved to a more relevant statute, such as the Regulations Act. There was an acknowledgement that the section served as a "safety valve" in the case of a drafting error.

We believe that the Committee got it right the first time. The opening words of the section – "regulations for the due enforcement and carrying into effect of any Act of the Legislature" – are so general as to be of little, if any, practical worth. Indeed, there are no regulations that are authorized by these words. As for the other part of section 22, specific clauses would be included in an Act to authorize forms or fees, if they were thought necessary. Thus, authorization under the Interpretation Act would not be required.

There is still the question of what to do about a regulation-making power that has been inadvertently omitted from an Act. The answer is not the invocation of section 22, but rather the amendment of the Act involved.

Our assessment of section 22 was best expressed by Professor Janisch:

. . . it is a very important principle that when the Legislature grants lawmaking power, it be aware of what it is doing and it should do so specifically in the act. (March 24, 1988)

RECOMMENDATION

25. Section 22 of the Interpretation Act should be repealed.

VI

REGULATIONS: FORM AND ACCESS

The Need for Change

The statutory requirement is very clear. All regulations must be published in The Ontario Gazette within one month of their filing. In this chapter, our concern is the way in which this requirement is met. Are regulations understandable to the public? How accessible are they? Is some gobbledygook or legalese unavoidable?

Sidney Tucker, Deputy Senior Legislative Counsel, told us that:

We are constantly doing our best to improve the language and the format to make them more easily read. . . . I do not think we could be accused of being deliberately obscure. (March 31, 1988)

He then referred to the difficulties caused by a complex subject matter:

One cannot always write in too simple language because after all the subject is complex. Sometimes our true audience is the court. (March 31, 1988)

We question whether complexity of subject matter must mean complexity of language. But even if the language must be complex at times and designed for lawyers and judges, there are still measures to make regulations more understandable and accessible to the public. These measures are discussed below.

We wish to reaffirm a principle stated earlier. The ordinary citizen has a right to know what she or he is free to do or is required to do. Efforts to make that right more meaningful will strengthen the public's confidence in the institutions of government.

Explanatory Notes

Currently, Ontario regulations are published without any kind of explanatory note. The Ontario situation is in marked contrast to the practice prevailing in Ottawa. A regulatory impact analysis statement (RIAS) is published with

proposed and final regulations in The Canada Gazette. Among other items, the RIAS describes the regulation and its anticipated impact, and designates a contact person.

Richard Thompson of the Privy Council Office endorsed the theory of explanatory notes as "very sound." Technical material could be made comprehensible to the general reader. He spoke positively of his own experience with the notes:

There is no question that when you look at a very technical piece, if you are regulating, for example, the characteristics of an aeroplane radio system, it is incomprehensible to everybody except a very small handful of experts, so you need to have something the general reader could understand. . . . I can make sense now of every regulation without having to read a very technical piece. (March 22, 1988)

The Committee is aware that many new regulations either amend or revoke existing regulations. Without an explanatory note, it is very difficult to make any sense of these new regulations. How much information is conveyed by a regulation that says simply that "section 32 is revoked"?

Deputy Senior Legislative Counsel saw the preparation of explanatory notes as "one more formal problem in dealing with the regulations . . ." He remarked on the effect on turnaround time:

In general, I think you can say that the turnaround time is not more than one week for the average regulation. If we go on to do more things, that turnaround time may increase slightly. It may not be significant. (Sidney Tucker, March 31, 1988)

We consider that the objective of making regulations understandable to the public clearly outweighs a "slight" increase in turnaround time. Accordingly, we recommend that explanatory notes be published in The Ontario Gazette. One alternative which the Committee may decide to explore would involve a compendium of background information on a regulation. The compendium would be available to the public from a contact person whose name would be published in the Gazette. Under this alternative, the explanatory note would not be published in the Gazette; rather, it would form part of the compendium. The structure of this compendium would be the subject of hearings by the Committee.

RECOMMENDATION

26. An explanatory note should accompany each regulation in The Ontario Gazette. The note should resemble the summaries of proposed regulations which would be required under Recommendation 1. Accordingly, it should give a plain language summary of the regulation, state the reasons for the regulation, and designate a contact person. It should also summarize the consultation which has taken place.

Statutory Authority

The Ontario Gazette cites the title of the Act authorizing a regulation. However, the actual section(s) or subsection(s) which authorize the regulation are not cited. Here again, the Ontario practice can be contrasted with Ottawa's. The precise statutory authority is published with proposed and final regulations in The Canada Gazette. We learned, as well, that the Privy Council Office requires the exact statutory authority to be cited before publication in the Gazette, at the time departments make submissions to the Cabinet.

The Committee wishes to stress the desirability of publishing the statutory authority as precisely as possible. Publication will assist the public in understanding the purpose of the regulation. It will also assist those members of the public who may wish to challenge the validity of the regulation. They will know immediately what enabling power(s) has been relied upon by the Government.

We do not regard this kind of publishing requirement as burdensome. Ministry counsel are already advised by the Registrar's Office to identify the statutory authority in their instructions for the drafting of a regulation. In addition, the Registrar's Office makes its own determination as to the relevant authority.

One concern that was raised by both the Registrar and Assistant Registrar was the effect of misreciting the statutory authority. Would an otherwise valid regulation be declared invalid by the courts? The testimony of subsequent witnesses revealed that, in general, misrecital would not invalidate a regulation. Our attention was drawn to one case to the contrary – a 1925 decision of the Supreme Court of Victoria (Australia) in Abbott v. Shire of Heidelberg. The Committee was told that it was doubtful that Abbot's case

would be followed, if the issue came before the courts again. (François Bernier, April 12, 1988, quoting from Professor Dennis Pearce's Delegated Legislation)

Recommendation 26 seeks to remove any doubt as to the effect of misreciting statutory authority.

RECOMMENDATIONS

27. The exact statutory authority for making a regulation should be published with the regulation in The Ontario Gazette. Thus, the relevant section(s) and subsection(s), if applicable, should be identified in addition to the authorizing Act.
28. The Regulations Act should be amended to state that the incorrect citation in The Ontario Gazette of the statutory authority for making a regulation does not thereby invalidate the regulation, where statutory authority for the regulation does exist.

Headings

The nature of the heading which precedes a regulation in The Ontario Gazette varies widely. A subject heading can range from "General" to much more specific words such as "Marketing of Milk to Fluid Milk Processors."

The Committee was pleased to hear the Registrar of Regulations acknowledge that:

It is an area where you can spend a lot of time trying to improve, and there may well be room for improvement. . . . (Russell Yurkow, March 21, 1988)

However, we were disappointed by his comments that:

It does not seem productive to spend a lot of time worrying about the format of the headings or whatever in the Gazette because no one looks at them. . . . virtually no one would benefit from it, or care. (March 21, 1988)

We believe that more people would "care" about an improvement in the style of headings, if the improvement was part of an overall approach to make regulations more accessible to the public. Our recommendations in this chapter seek to improve accessibility. More descriptive headings, when combined with such measures as explanatory notes, will help to achieve this goal.

RECOMMENDATION

29. The subject heading at the beginning of a regulation should be descriptive of the contents of the regulation. The use of the heading "General" should be avoided as much as possible.

Subject Index

Accessibility to regulations in any real sense is not possible without a proper subject index. Presently, a cumulative list of regulations is published each year as an addendum to the Gazette. This list is also published at the back of the annual statutes volume. The list, however, is just a list of regulations made under Acts. It does give the headings of regulations, but unfortunately the headings appear only under the title of the Act in question. An excerpt from the 1987 list appears in Appendix T. Carswell's Regulations Service publishes a similar index on a monthly basis.

Professor Janisch graphically described to the Committee the problem facing a law librarian who was asked to research a topic – standards for the making of yoghurt – without a proper subject index:

She did not know where to start. Where do you start? Is that under health legislation? Is that under agricultural legislation? Is that under the Milk Act? Where is it at? ... I suggest that if you are looking for regulations governing a certain subject matter, you have to guess what the statute is that they are enacted under and then spend hours, if not days, laboriously going through literally thousands of pages looking for what you want.
(March 24, 1988)

Janisch added that a computerization of the present system of lists would make little difference:

... if you just take all this and put it in a computer, it is garbage in, garbage out. You do not get anything more out of a computerized system than you put into it. ... (March 24, 1988)

The Committee requested the Canadian Law Information Council (CLIC) to prepare an estimate of the cost of creating a subject-matter index. CLIC has 10 years of experience producing indexes for federal and provincial statutes, including the Revised Statutes of Ontario.

It was estimated by CLIC that it would cost \$200,000 to produce a subject-matter index for every 9,000 pages of consolidated regulations. This figure was based on the size and content of the 1980 Revised Regulations of Ontario. It did not include printing, marketing, and distribution costs. These costs are traditionally absorbed by the contracting government.

In his testimony before the Committee, Deputy Senior Legislative Counsel, emphasized the cost and time involved in the preparation of an index. He also had questions about the kind of index that would be created. Would it, for instance, be word-by-word, listing every place a particular noun appeared? It was pointed out by Deputy Counsel that there were more regulations than statutes, that the number of topics was probably greater, and that the frequency of change was greater. Regulations were published each week. "How could an indexing system keep up with those changes?" (Sidney Tucker, March 31, 1988)

The Committee feels that the above issues are not insurmountable and can be resolved in discussions between the Registrar's Office and CLIC.

RECOMMENDATIONS

30. The Office of the Registrar of Regulations and the Canadian Law Information Council should enter into discussions with a view to creating a subject index to the regulations of Ontario. The index should be cumulative and accessible in print form as well as "machine readable" form.

31. The cumulative list of regulations published annually by the Office of the Registrar of Regulations should be published at least on a semiannual basis.

Structure of Ontario Gazette

The suggestion was made that The Ontario Gazette should be divided into a Part I: Notices, Part II: Regulations, and Part III: Public Legislation (as passed at third reading). This kind of division would facilitate research; it also has a precedent at the federal level.

Currently, notices and regulations are published in the same issue of the Gazette. Public bills (as passed at third reading) do not appear in the Gazette. They are published by the government on an individual basis and as part of a collection; however, the collection is published only once a year in the form of the official statutes volume. A Gazette Part III: Public Legislation would overcome one of the frustrations with the present system:

. . . it is very frustrating, when doing legal research, to discover precisely what has been passed at third reading. It is easy to get hold of the legislation as introduced; it is very difficult to be sure you have a precise version of it as finally passed. The Canada Gazette, part III, is an extraordinarily valuable research tool because you can get hold of the legislation as finally passed. (Professor Janisch, March 24, 1988)

We consider it very important that all legislation, not just regulations, be made more accessible to the public.

RECOMMENDATION

32. The Ontario Gazette should be published in three parts – Part I: Notices, Part II: Regulations, and Part III: Public Legislation (bills that have recently been passed).

VII LAND USE REGULATIONS

The Issue

This chapter focuses on the large number of land use regulations that are issued under the Planning Act, 1983. The discussion extends to the regulations issued under two other planning acts: the Parkway Belt Planning and Development Act and the Niagara Escarpment Planning and Development Act.

Most of these regulations affect particular parcels of land and would be of interest primarily to the owners of the parcels in question. Nonetheless, they are all filed with the Registrar of Regulations and published in The Ontario Gazette. The issue facing the Committee is whether or not there is a viable alternative system for processing these regulations that would exempt them from the filing and publishing requirements of the Regulations Act. In attempting to resolve this issue, we recognize that:

. . . there has to be some reliable record maintained somewhere that can respond to inquiries as to whether there is or is not any control on the land. (John Bell, Ministry of Municipal Affairs, March 29, 1988)

Under the present system, lawyers can look at the regulations and determine if there is a ministerial order affecting particular land.

Planning Act, 1983

Under section 46 of the Planning Act, 1983, the Minister of Municipal Affairs may issue, amend, or revoke zoning orders. As mentioned earlier, these orders are considered to be regulations under the Regulations Act. They are of two kinds: (1) "parenting" and (2) "exempting". Parent orders operate as zoning or building controls and affect many parcels of land. On average, about 10 such orders are filed each year. Exemption orders, on the other hand, exempt parcels of land from the parent orders. On average, about 90 exemptions are filed annually. In a submission to the Committee, the Registrar of Regulations wrote that:

There appears to be no benefit in undertaking the expense of publishing these [exemption orders] in the Gazette and using our staff time in vetting, typing, recording, indexing and checking galley proofs. (Russell Yurkow, April 14, 1988)

The Committee examined two options for dealing with the exemptions. Under the first option, the Planning Act would be amended to provide that the exemptions were not regulations within the meaning of the Regulations Act. The second option, which is discussed in more detail below, would remove not only the exemptions, but also the parent orders, from the regulations system. We prefer the second option. A reliable and accessible record-keeping system can be created which does not require the Registrar's Office to process any of the zoning orders.

The second option requires an understanding of section 46(6) of the Planning Act. Section 46(6) says that copies of the orders must be "lodged" with the relevant municipality. If the land is in an area without municipal organization, then copies must be "lodged" in the proper land registry office and made available to the public. In his brief, the Registrar of Regulations stated that:

This [lodging] aspect does not work well because there is no onus on the recipient to record, index or retain the copies. If this did work both the parent orders and the exemptions could be taken out of the regulations system. [emphasis added] (Russell Yurkow, April 14, 1988)

The Registrar suggested that a "simple amendment" to section 46 could rectify the problem. The orders would then be treated the same way as any zoning by-law. He also suggested an amendment to require the Ministry of Municipal Affairs to keep a record of the orders for back-up purposes.

It was the Registrar's assessment that these changes would "not impose a great added burden." The orders were already required to be deposited and the Ministry kept some records anyway. (April 14, 1988)

The recommendations which follow bear some similarity to the conclusions reached in our First Report 1979. In the 1979 report, we concluded that

. . . the filing and publication of these ministerial orders under the Regulations Act is a superfluous procedure which could be eliminated without the slightest harm to anyone or even causing anyone any inconvenience.

The time has come to pass an exemption to the Regulations Act.

RECOMMENDATIONS

33. Section 46 of the Planning Act, 1983 should be amended to require the municipalities and land registry offices that receive copies of ministerial zoning orders to record, index, and retain the copies for public inspection.
34. Section 46 should also be amended to require the Ministry of Municipal Affairs to record, index, and retain copies of all ministerial zoning orders.
35. Section 1 of the Regulations Act should be amended to exempt from the definition of "regulation" all ministerial zoning orders made under section 46 of the Planning Act, 1983.

Other Planning Legislation

Land use regulations affecting specific parcels of land are also made under the Parkway Belt Planning and Development Act and the Niagara Escarpment Planning and Development Act. The Committee is aware that the number of regulations under these Acts is much lower than the comparable figure for the Planning Act. Over the last seven years, there has been an average of less than two regulations a month under the Parkway Act. The average under the Niagara Escarpment Act is less than one regulation a month. Notwithstanding those figures, the filing and publishing of these regulations does entail time and expense. The Committee believes that the public would be better served

by having a record-keeping system that would be accessible at the Ministry level and at the local level in land registry offices where title to land is searched.

RECOMMENDATIONS

36. The Parkway Belt Planning and Development Act and the Niagara Escarpment Planning and Development Act should be amended to require the registration of regulations thereunder in the relevant land registry office.
37. The Parkway Belt Planning and Development Act and the Niagara Escarpment Planning and Development Act should be amended to require the Ministry of Municipal Affairs to record, index, and retain copies of regulations thereunder.
38. Section 1 of the Regulations Act should be amended to exempt from the definition of "regulation" the regulations made under the Parkway Belt Planning and Development Act and the Niagara Escarpment Planning and Development Act.
39. The Ministry of Consumer and Commercial Relations should establish a simplified registration system for the registration of land use regulations under the Planning Act, 1983, the Parkway Belt Planning and Development Act, and the Niagara Escarpment Planning and Development Act that would not require surveys.

VIII SUNSET CLAUSES

The Concept

The concept of "sunset laws" denotes a particular kind of legislation – legislation which sets a predetermined date for the termination of some, or all, of its provisions. Exceptions to the termination scheme may be prescribed. In addition, re-enactments of the legislation are possible.

The principal justification for sunseting holds that the effectiveness of government is improved. This justification applies to sunseting, whether it be in the form of "sunset laws" or in the form of administrative procedures for the review of legislation. In the regulatory context, Members are compelled to ask whether the original goals of the regulations are still worth pursuing. As well, they must determine how effective the regulations have been in meeting those goals. The argument continues that only measures that are still relevant and important will remain.

Sunset Strategies

The Committee addressed the following issue: what review strategy will best improve the effectiveness of regulations? There is little doubt that some strategy is necessary. Even the Registrar of Regulations acknowledged that:

. . . in going through regulations there are a number of regulations where you wonder, what purpose do they serve? (Russell Yurkow, March 21, 1988)

In making this comment, the Registrar was not referring to just five or ten regulations. In fact, he testified that, as part of the process of consolidating the regulations of Ontario for 1990:

. . . we have identified 300 or 400 that we would propose to let die . . . because they do not seem to have any effect. (March 21, 1988)

The Committee welcomes this weeding-out process by the Registrar's Office. However, the process does have shortcomings. First of all, the consolidation only occurs every 10 years. Secondly, and more importantly, the principle of accountability requires that Members play a meaningful role in evaluating the effectiveness of regulations.

General Sunset Law

One potential role for the Legislature, which we reject, would be the passage of a general sunset law. Such a law would provide for the automatic expiry of most regulations, unless they were reissued or governed by an exemption. The Australian states of Victoria and Queensland recently adopted this approach. They have prescribed expiry dates based on the date of making a regulation. In Queensland, for instance, regulations made after June 30, 1986, will expire seven years after they have been made. The Queensland legislation is reproduced in Appendix W.

Our opposition to a general sunset law stems, in part, from the absurd consequences that can result. By way of illustration, we were told by Tony Campbell of the Office of Privatization and Regulatory Affairs that:

Many state legislatures in the United States had famous sessions where they would meet at 10 minutes to midnight on the sunset night and pass 160 laws again, that sort of thing. (March 22, 1988)

Campbell did not know of any general law that was problem-free:

I am not aware of any instance where the concept of generalized sunseting in one fell swoop — or in some cases they divided it into three; every year a third of the laws would come up for review — has been a total success. (March 22, 1988)

Administrative Policies

An administrative policy on sunseting was adopted by Ottawa in 1986. Principle no. 4 of the "Regulatory Process Action Plan" states that:

- Parliamentary Committees will review all regulatory statutes over a ten-year cycle and recommend sunseting action to the government;
- A Cabinet Committee will ensure the review of all regulations over a seven-year period and recommend sunseting action to the Cabinet;
- All regulatory programs will be evaluated for efficiency and effectiveness at least once every seven years by the Office of the Comptroller General in consultation with the Regulatory Affairs Secretariat;
- Certain regulatory programs will be the subject of periodic in-depth policy reviews initiated by the Cabinet.

It is too early to adequately assess the effectiveness of the federal policy. When testifying about the evaluation of federal regulatory programs, Tony Campbell admitted that:

We are still experimenting . . . it still remains to be seen whether over time this particular concept will work.
(March 22, 1988)

Ottawa's approach recognizes that Parliament and the Cabinet must play a prominent role in any sunseting policy. As stated earlier, we consider the role of Members to be especially important. Accordingly, we propose that Standing Committees of the Legislature should evaluate the effectiveness of regulations on a rotating basis. In order to maintain its nonpartisanship and because of the need for "policy" expertise, this Committee should not participate in the review process.

The objective should be the review of all regulations in the Province over a seven to ten year cycle. This time-frame is based on the time limits set out in the federal policy.

Earlier (see Recommendation 13), we recommended that Standing Committees should be authorized, of their own motion, to review the merits of regulations. Here, our recommendation focuses on one aspect of merits – the effectiveness of the regulation. Is the regulation actually working?

Apart from assigning a role to Committees, we would encourage Ministries and agencies to insert sunset clauses in regulations on a selective basis. The building-in of sunset provisions is encouraged at the federal level.

RECOMMENDATIONS

40. The Standing Orders should be amended to require Standing Committees to evaluate the effectiveness of regulations on a rotating basis. Each year, there should be an evaluation of the regulations falling under particular Ministries. The goal should be the systematic review of the regulations under all Ministries over a seven to ten year cycle.

Regulations would be referred to the Standing Committee with the relevant expertise. Thus, for example, regulations falling under the Ministries of the Attorney General and the Solicitor General should be referred to the Standing Committee on the Administration of Justice.

The amended Standing Orders should require Committees to allocate a specified number of hours to this function. Alternatively, Committees should be required to review a specified number of regulations.

41. Before making or recommending a regulation, Ministries and agencies should consider whether or not a sunset provision would be appropriate. The assessment of the appropriateness of a sunset provision should be included on the information sheet accompanying the draft regulations that are submitted to the Cabinet Committee on Regulations.

IX REGULATORY REFORM STRATEGY

Office of Regulatory Affairs

The recommendations in the preceding chapters together comprise a regulatory reform strategy for Ontario. Unlike the strategy developed in Ottawa, our strategy does not call for a Ministry or Office of Regulatory Affairs. The Committee regards the creation of an additional bureaucracy as something to be avoided. The Office of Privatization and Regulatory Affairs in Ottawa may not be massive, but it does consist of 14 person-years and has an annual budget of approximately \$800,000. (The Auditor General is planning to do a study of the Office.)

Cabinet Committee on Regulations

A proposed regulation which involves provincial revenues or expenditures must be submitted to Management Board of Cabinet for approval. It should be a function of the Cabinet Committee on Regulations to assess regulations from the perspective of their necessity and/or effectiveness. It should also play a role in coordinating government policy as expressed in our proposed Citizens' Code of Regulatory Fairness.

Earlier (pp. 27 and 60), we referred to the information sheet that accompanies the draft regulations that are submitted to the Cabinet Committee on Regulations. We believe that items should be added to the information sheet to reflect the regulatory reform strategy proposed in this report. Accordingly, we would include such items as compliance with the Charter of Rights and reliance on exemptions from the Notice and Comment procedures. Another item for inclusion – the appropriateness of a sunset provision in the regulation – was raised in Recommendation 41.

RECOMMENDATIONS

42. The Cabinet Committee on Regulations should assess the necessity and/or effectiveness of regulations. The Cabinet Committee should assume a coordinating role with respect to principles iv (benefits of regulations exceed costs), v (reforming ineffective regulations), vii (ensuring

efficiency and promptness), ix (ensuring that officials are held accountable), and x (enhancing predictability) of our Citizens' Code of Regulatory Fairness which is proposed in Recommendation 44.

43. The information sheet that accompanies the draft regulations that are submitted to the Cabinet Committee on Regulations should be modified by adding the following items: (1) compliance with the Canadian Charter of Rights and Freedoms; (2) reliance on exemptions from the Notice and Comment procedures – if an exemption has been invoked, an explanation should be given; (3) assessment of the appropriateness of a sunset provision (see Recommendation 41); and (4) such other items as the Cabinet Committee on Regulations might consider appropriate in order to implement the regulatory reform strategy proposed in this report.

Citizens' Code of Regulatory Fairness

One component of the federal strategy is a citizens' code of regulatory fairness. The federal code is reproduced in its entirety in the Appendices. We propose a similar concept for Ontario.

A citizens' code would stress the Government's commitment to fairness, accessibility, and accountability. The rationale for such a code in a democracy has been given by the federal government:

When a government regulates, it limits the freedom of the individual. In a democratic country, it follows that the citizen should have a full opportunity to be informed about and participate in regulatory decisions. Moreover, the citizen is entitled to know the government's explicit policy and criteria for exercising regulatory power in order to have a basis for "regulating the regulators" and judging the regulatory performance of the government. [emphasis added] (Regulatory Reform Strategy)

We agree with the above rationale. A citizens' code would establish a set of principles against which people who feel aggrieved because of a particular regulatory proposal could assess the regulation. In addition, it would serve to rally Ministries and agencies around the common principles which they share in carrying out their task of making rules on behalf of the Government.

RECOMMENDATION

44. The Government should develop a Citizens' Code of Regulatory Fairness.

The Code should contain the following principles:

- i. The Government will encourage consultation and participation by the people of Ontario in the regulatory process without unduly impairing the efficiency and flexibility of that process.
- ii. The Government will provide all interested parties with early notice of proposed regulatory initiatives, unless the costs of doing so outweigh the benefits or there is an urgency or other government objective which precludes advance notice in a particular case.
- iii. Once regulatory requirements have been established in law, the Government will communicate to Ontarians in clear language what the regulatory requirements are, and why they have been adopted.
- iv. The Government will ensure that the benefits of regulations exceed the costs and will give particularly careful consideration to all new regulations that could impede economic growth or job creation.
- v. The Government will place priority on improving ineffective regulations.
- vi. The Government will cooperate fully with the Legislature in making the review of regulations by the Legislature as effective as possible.

Unlike the principles outlined above, the following principles deal with the way administrators apply regulations. These are similar to provisions in the federal government's Citizens' Code of Regulatory Fairness and are in accordance with the principles of justice and common sense.

- vii. The Government will take measures to ensure efficiency and promptness in regulatory decision-making.
- viii. The rules, penalties, processes, and actions of regulatory authorities will be securely founded in law.
- ix. The Government will ensure that officials responsible for developing, implementing or enforcing regulations are held accountable for their advice and actions.
- x. The Government will enhance the predictability of the exercise of discretionary powers by regulatory authorities and ensure, to the maximum extent possible, consistency in the administration of regulations and policy directives throughout the Province of Ontario.

Costs

The Committee has attached considerable weight to the principle of fiscal responsibility. This principle has guided the formulation of our regulatory reform strategy. We believe that our recommendations can, and should, be implemented within a framework of fiscal responsibility.

The "cost" factor was raised constantly during our questioning of witnesses. Some witnesses were able to present estimates of the costs of various programs and proposals; unfortunately, others were not. In assessing the evidence on costs, we recognize that a cost-benefit analysis can only go so far. How does one measure the benefits of "better" regulation? It is very difficult to assign a dollar figure. This difficulty was demonstrated in the questioning of Ed Piché of the Ministry of the Environment. Piché was asked if the public consultation process on the General Air Pollution Regulation (Regulation 308), which had cost approximately \$250,000, had produced a better regulation. He responded:

We do not have the regulation yet . . . In our own personal opinion, if a larger segment of society more fully understands the document, I think we as a society, collectively, benefit. (March 29, 1988)

He added:

The importance of the broader consultation is simply that you have a more informed society, and the better informed the society is, the more vigilant it will be . . . If you are vigilant, that adds to the protection of the ambient air (March 29, 1988)

The conclusions that we have drawn on the costs of our proposals are:

- Notice and Comment (Recommendations 1-7). In large measure, we are formalizing consultative procedures that already occur on an informal level. An extra cost will be the publication of summaries of proposed regulations. In order to limit costs, we would not establish a special bureaucracy to oversee the Notice and Comment procedures.

- Disallowance (Recommendations 8–9). Our recommendations entail amendments to the Regulations Act and the Standing Orders. Major costs are not involved.
- Mandate of the Standing Committee on Regulations and Private Bills (Recommendations 10–18). An expanded mandate will require the hiring of full-time counsel. Funds will also have to be allocated for the publication of policy directives of a legislative nature.
- Amendments to the Regulations Act (Recommendations 19–25). The proposed amendments are "technical" in nature. The costs should be minimal.
- Regulations: Form and Access (Recommendations 26–32). The preparation of explanatory notes and more descriptive headings, and the recital of the precise statutory authority will entail some additional costs for the Office of the Registrar of Regulations. The Registrar's Office already keeps a cumulative list of regulations on a continuing basis. Thus, only publishing costs are involved in making the list available to the public more frequently. A three-part Ontario Gazette would also necessitate more funds for publishing; however, the costs of publishing Part III: Public Legislation (as passed at third reading) might be recovered. The proposed Part I: Notices and Part II: Regulations are already published, but in the same issue of the Gazette. The Canadian Law Information Council estimates that a subject-matter index would cost \$200,000 for every 9,000 pages of consolidated regulations.
- Land Use Regulations (Recommendations 33–39). The Registrar's Office would no longer have to index and check galley proofs of these regulations. Publication in The Ontario Gazette would no longer be required. Land registry offices, municipalities, and the Ministry of Municipal Affairs would experience the costs of recording additional information.
- Sunset Clauses (Recommendations 40–41). The objective is the elimination of ineffective regulations. The repeal or expiry of a regulation means there will cease to be costs of implementation or enforcement.
- Regulatory Reform Strategy (Recommendations 42–44). There are no major costs associated with the issuance of a declaration of principles.

X CONCLUSION

Regulations have been called "the flesh on the skeleton legislation" passed by Legislatures. This report focuses on the process of making that "flesh" – of giving "life" to Acts.

Our review of the regulation-making process has stressed the importance of three principles: (1) fairness; (2) accessibility; and (3) accountability. As a Committee of the Legislature for the scrutiny of regulations, we feel a special responsibility to uphold the principle of accountability. The exercise of regulation-making powers should not escape ultimate accountability to the Legislature. As Professor Paul Thomas wrote in his submission to the Committee:

Parliamentarians, as elected representatives of the public, must not forfeit their responsibility to control ultimately what becomes law. (April 18, 1988)

Regulations are laws and, as such, can have far-reaching implications. The importance of regulations and regulatory reform is reflected in our invocation of Standing Order 32 whereby we request a debate in the House on this report and a comprehensive response from the Government. Following that response, we will be requesting representatives of the Government to appear before the Committee to discuss the implementation of our recommendations. Regulatory reform is too important to be relegated to the political "backburner".

XI LIST OF RECOMMENDATIONS

NOTICE AND COMMENT

1. The Ministry of the Attorney General should introduce legislation amending the Regulations Act to provide for Notice and Comment procedures that would apply to all proposed regulations, subject to certain exceptions. The Notice and Comment procedures should include the following components:
 - (a) Before making a substantive regulation, each Ministry and agency should publish a notice in The Ontario Gazette, The Ontario Reports, and any other source that the Ministry or agency considers necessary for reaching affected persons;
 - (b) The notice should give a plain language summary of the proposed regulation, state the reasons for the regulation, and cite the relevant statutory authority. The text of the regulation should also be published, if considered appropriate by the Ministry or agency. If the text is not published, the public should be informed as to where copies may be obtained. An information officer would be designated in the notice;
 - (c) Members of the public should have the right to comment in writing on the proposed regulation. If the Ministry or agency regards a hearing as appropriate, one should be held to receive oral comments;
 - (d) The minimum period of time for submitting comments should be 30 days. The Ministry or agency should extend that period where, in its opinion, the length, complexity, or importance of the regulation so requires;
 - (e) After the Ministry or agency has received the comments, it must write a report. The report should summarize the comments and address the concerns that were raised. This report should be available for scrutiny by the Standing Committee on Regulations and Private Bills;
 - (f) Nonpublication or a shorter prepublication period would be justified on the basis of (1) an emergency; (2) a cost-benefit analysis; or (3) sensitivity of a financial nature (e.g. budgetary measures). The reasons for invoking these exceptions should be published in the Gazette. Procedural rules would also be exempted from the publication requirements. Further exemptions could be inserted in individual statutes;
 - (g) Failure to comply with the Notice and Comment procedures should not invalidate a regulation;
 - (h) The Standing Committee on Regulations and Private Bills should have the mandate to determine if the statutory procedures have been followed and to report thereon to the House.

2. Before introducing a bill for first reading, each Ministry should make the following determination: should the Notice and Comment procedures that would apply to regulations under the bill as a result of the amended Regulations Act be expanded upon? If so, procedures for greater consultation should be incorporated in the bill. The Ministry's review of consultation procedures should be tabled with the Cabinet Committee on Regulations in the form of a report.
3. Each Ministry should reassess its administrative practices for consulting with the public, taking into account that the amended Regulations Act would establish a minimum standard of consultation. A report on the reassessment should be submitted to the Standing Committee on Regulations and Private Bills within one year of the adoption of this report.
4. The current system whereby designated individuals and groups receive notice of draft regulations on a particular subject should be upgraded. A formal registration system – that is, a Registry – should be devised to allow individuals and groups to register with the appropriate Ministry or agency for the purposes of receiving notice. This Registry would be part of the system for giving notice under the amended Regulations Act. Registrants should be given information about the scrutiny role of the Standing Committee on Regulations and Private Bills.
5. The Standing Committee on Regulations and Private Bills should act as a central clearinghouse of information on the effectiveness of Notice and Comment procedures.
6. Where a Ministry or agency has invoked one of the exemptions in Recommendation 1(f) and has received an objection from an individual or group to the use of the exemption, the Ministry or agency should (a) review the use of the exemption with a view to assessing its reasonableness and (b) advise the Standing Committee on Regulations and Private Bills of the objection and its response thereto.
7. Upon receiving notice of an objection to the use of an exemption, the Regulations Committee should assess whether or not the use of the exemption was reasonable in the circumstances. Under Recommendation 1(h), the Committee would be empowered to report to the House on the appropriate or inappropriate use of an exemption.

DISALLOWANCE

8. The Regulations Act should be amended to add procedures for the disallowance of regulations. The amendments must include the following provisions:
 - (a) The Standing Committee on Regulations and Private Bills should be empowered to make a report to the House containing a resolution that a specified regulation, or part thereof, be disallowed;
 - (b) Once the report has been tabled, a vote must be held within the next 20 sitting days. Otherwise, at the expiry of the 20 days, the report will be deemed to have been adopted;
 - (c) Upon the adoption, or deemed adoption, of the report, the regulation in question shall cease to have effect;
 - (d) The adoption, or deemed adoption, of the report has the same effect as the repeal of the regulation.

9. The Standing Orders should be amended to specify that:
 - (a) before submitting a disallowance report to the House, the Standing Committee on Regulations and Private Bills must afford officials of the Ministry concerned (including the Minister and Deputy Minister) the opportunity to appear before the Committee to explain the regulation in question;
 - (b) the debate on a motion for adoption of a disallowance report must not exceed one hour;
 - (c) the motion for adoption of the disallowance report should not be seen as a question of confidence in the Government.

(All our recommendations for amendments to the Standing Orders should be referred by the House to the Standing Committee on the Legislative Assembly under Standing Order 90(h).)

MANDATE OF THE STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

10. Standing Order 90(j) of the Legislative Assembly should be amended to add a guideline no. 10 which would read: "Regulations should be in conformity with the Canadian Charter of Rights and Freedoms."

11. Standing Order 90(j) should be amended to add a guideline no. 11 which would read: "Regulations should not make any unusual or unexpected use of delegated power."
12. The Regulations Act or the Standing Orders should be amended to explicitly authorize the Standing Committee on Regulations and Private Bills to study the effectiveness of the regulation-making system in Ontario and in other jurisdictions.
13. The Standing Orders should be amended to authorize Standing Committees, of their own motion, to review the merits of regulations.
14. The Committee's mandate in the Regulations Act should be expanded beyond the review of regulations to include enabling clauses in bills. The Committee should advise the Standing Committee considering a bill whether or not the enabling clauses contain overly broad or vague enabling powers. Examples are (a) clauses which confer the power to amend the enabling Act by regulation ("King Henry VIII" clauses) and (b) the excessive reliance on clauses authorizing "any other regulations as are required to bring this act into effect" ("basket" clauses). In order to adequately assess the enabling clauses in a bill, the whole bill will have to be referred to the Committee. We reiterate that the Committee would not be reviewing matters of policy.
15. The Committee's mandate in the Regulations Act should be extended to include the scrutiny of bills for compliance with the Canadian Charter of Rights and Freedoms. The Committee should advise the Standing Committee considering a bill of possible contraventions of the Charter.
16. If the Committee's jurisdiction is expanded in accordance with Recommendations 14 and/or 15, the Committee should be renamed the Standing Committee for the Scrutiny of Bills and Regulations. Full-time counsel should be retained to assist the Committee. A separate Standing Committee on Private Bills may or may not be necessary.
17. The definition of "regulation" in section 1(d) of the Regulations Act should be amended to read: "'regulation' means a regulation, rule, order, by-law, or any other document made in the exercise of a legislative power, including policy directives, policy statements, manuals, and guidelines . . . "

18. The Regulations Act and the Standing Orders should be amended to authorize the Committee to sit not only during sessions, but between sessions as well.

AMENDMENTS TO THE REGULATIONS ACT

19. All the exemptions from the Regulations Act should be consolidated in section 1 of the Act.
20. Declarations in other Acts that the Regulations Act applies to specific regulations should be consolidated in section 1 of the Regulations Act.
21. Section 6 of the Regulations Act should be amended to eliminate the power of the Attorney General to determine what constitutes a "regulation." The remainder of the section should be re-enacted to limit the Minister's powers to what is required in order to administer the act.
22. Section 7 of the Regulations Act should be rewritten to state the current functions of the Registrar of Regulations more accurately.
23. Section 7 should not authorize the vesting of powers in the Registrar by regulation or by the Minister. This amendment requires that section 10(1)(a) of the Act be amended, as well, to allow the Lieutenant Governor in Council to prescribe duties only, and not powers, of the Registrar.
24. Sections 1, 5, and 8 of Regulation 899 should be transferred to the Regulations Act.
25. Section 22 of the Interpretation Act should be repealed.

REGULATIONS: FORM AND ACCESS

26. An explanatory note should accompany each regulation in The Ontario Gazette. The note should resemble the summaries of proposed regulations which would be required under Recommendation 1. Accordingly, it should give a plain language summary of the regulation, state the reasons for the regulation, and designate a contact person. It should also summarize the consultation which has taken place.

27. The exact statutory authority for making a regulation should be published with the regulation in The Ontario Gazette. Thus, the relevant section(s) and subsection(s), if applicable, should be identified in addition to the authorizing Act.
28. The Regulations Act should be amended to state that the incorrect citation in The Ontario Gazette of the statutory authority for making a regulation does not thereby invalidate the regulation, where statutory authority for the regulation does exist.
29. The subject heading at the beginning of a regulation should be descriptive of the contents of the regulation. The use of the heading "General" should be avoided as much as possible.
30. The Office of the Registrar of Regulations and the Canadian Law Information Council should enter into discussions with a view to creating a subject index to the regulations of Ontario. The index should be cumulative and accessible in print form as well as "machine readable" form.
31. The cumulative list of regulations published annually by the Office of the Registrar of Regulations should be published at least on a semiannual basis.
32. The Ontario Gazette should be published in three parts – Part I: Notices, Part II: Regulations, and Part III: Public Legislation (bills that have recently been passed).

LAND USE REGULATIONS

33. Section 46 of the Planning Act, 1983 should be amended to require the municipalities and land registry offices that receive copies of ministerial zoning orders to record, index, and retain the copies for public inspection.
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Regulations would be referred to the Standing Committee with the relevant expertise. Thus, for example, regulations falling under the Ministries of the Attorney General and the Solicitor General should be referred to the Standing Committee on the Administration of Justice.

The amended Standing Orders should require Committees to allocate a specified number of hours to this function. Alternatively, Committees should be required to review a specified number of regulations.

41. Before making or recommending a regulation, Ministries and agencies should consider whether or not a sunset provision would be appropriate. The assessment of the appropriateness of a sunset provision should be included on the information sheet accompanying the draft regulations that are submitted to the Cabinet Committee on Regulations.

REGULATORY REFORM STRATEGY

42. The Cabinet Committee on Regulations should assess the necessity and/or effectiveness of regulations. The Cabinet Committee should assume a coordinating role with respect to principles iv (benefits of regulations exceed costs), v (reforming ineffective regulations), vii (ensuring efficiency and promptness), ix (ensuring that officials are held accountable), and x (enhancing predictability) of our Citizens' Code of Regulatory Fairness which is proposed in Recommendation 44.
43. The information sheet that accompanies the draft regulations that are submitted to the Cabinet Committee on Regulations should be modified by adding the following items: (1) compliance with the Canadian Charter of Rights and Freedoms; (2) reliance on exemptions from the Notice and Comment procedures – if an exemption has been invoked, an explanation should be given; (3) assessment of the appropriateness of a sunset provision (see Recommendation 41); and (4) such other items as the Cabinet Committee on Regulations might consider appropriate in order to implement the regulatory reform strategy proposed in this report.

44. The Government should develop a Citizens' Code of Regulatory Fairness. The Code should contain the following principles:

- i. The Government will encourage consultation and participation by the people of Ontario in the regulatory process without unduly impairing the efficiency and flexibility of that process.
- ii. The Government will provide all interested parties with early notice of proposed regulatory initiatives, unless the costs of doing so outweigh the benefits or there is an urgency or other government objective which precludes advance notice in a particular case.
- iii. Once regulatory requirements have been established in law, the Government will communicate to Ontarians in clear language what the regulatory requirements are, and why they have been adopted.
- iv. The Government will ensure that the benefits of regulations exceed the costs and will give particularly careful consideration to all new regulations that could impede economic growth or job creation.
- v. The Government will place priority on improving ineffective regulations.
- vi. The Government will cooperate fully with the Legislature in making the review of regulations by the Legislature as effective as possible.

Unlike the principles outlined above, the following principles deal with the way administrators apply regulations. These are similar to provisions in the federal government's Citizens' Code of Regulatory Fairness and are in accordance with the principles of justice and common sense.

- vii. The Government will take measures to ensure efficiency and promptness in regulatory decision-making.
- viii. The rules, penalties, processes, and actions of regulatory authorities will be securely founded in law.
- ix. The Government will ensure that officials responsible for developing, implementing or enforcing regulations are held accountable for their advice and actions.
- x. The Government will enhance the predictability of the exercise of discretionary powers by regulatory authorities and ensure, to the maximum extent possible, consistency in the administration of regulations and policy directives throughout the Province of Ontario.

XII
WITNESSES

(oral and written submissions)
(in alphabetical order)

EXHIBIT NO.

John Bell, Q.C.
General Counsel
Community Planning
Ministry of Municipal Affairs
Appeared 3.00 p.m. March 29, 1988

Peter Bernhardt, Counsel
Standing Joint Committee on Regulations
and Other Statutory Instruments
Appeared 2.00 p.m. March 22, 1988

François Bernier, Senior Counsel
Standing Joint Committee on Regulations
and Other Statutory Instruments
Appeared 2.00 p.m. March 22, 1988

1/01/023

Ian Blue, Q.C., Solicitor
Canadian Bar Association
Appeared 4.00 p.m. March 30, 1988

William Bogart
Professor of Law
University of Windsor
Appeared 11.00 a.m. March 24, 1988

1/01/007

Tony Campbell
Assistant Deputy Minister
Regulatory Affairs
Office of Privitization
and Regulatory Affairs
Appeared 10.00 a.m. March 22, 1988

1/01/003

1/01/009

Dale Canham, Counsel
Special Committee on Regulations
Legislative Assembly of Saskatchewan

1/01/010

Graham Eglinton, Former Counsel
 Standing Joint Committee on Regulations
 and Other Statutory Instruments
 Appeared 11.00 a.m. March 23, 1988

Milt Farrow
 Assistant Deputy Minister
 Ministry of Municipal Affairs
 Appeared 3.00 p.m. March 29, 1988

Honourable John Godfrey 1/01/004
 Former Chairman
 Standing Joint Committee on Regulations
 and Other Statutory Instruments
 Appeared 10.00 a.m. March 23, 1988

W. Alan Hart, Marketing Manager 1/01/009
 Canadian Law Information Council

Gerald Heifetz, Legal Counsel
 Canadian Travel Association
 Appeared 11.00 a.m. March 30, 1988

John Hewings 1/01/012
 Senior Air Quality Land Use Evaluator 1/01/013
 Ministry of the Environment
 Appeared 11.00 a.m. March 29, 1988

Hank Intven, Solicitor
 Canadian Bar Association
 Appeared 4.00 p.m. March 30, 1988

Hudson Janisch, Professor of Law 1/01/006
 University of Toronto
 Appeared 10.00 a.m. March 24, 1988

Michel Leclerc, Director 1/01/001
 Regulations Office 1/01/014
 Government of Quebec

Tim Millard 1/01/011
 Assistant Deputy Minister
 Occupational Health & Safety
 Ministry of Labour
 Appeared 10.00 a.m. March 29, 1988

Paul Muldoon, Counsel
 Energy Probe
 Appeared 10.00 a.m. March 30, 1988

1/01/015

1/01/022

Ed Piché, Director
 Air Resources Branch
 Ministry of the Environment
 Appeared 11.00 a.m. March 29, 1988

Honourable Gregory Sorbara, Chairman
 Cabinet Committee on Regulations
 Appeared 10.00 a.m. March 31, 1988

Peggy Smyth, President
 Consumers' Association of Canada (Ontario)

1/01/016

Paul Thomas
 Professor, Political Studies
 University of Manitoba

1/01/024

Richard Thompson, Senior General Counsel
 Privy Council Office
 Office of Privitization
 and Regulatory Affairs
 Appeared 10.00 a.m. March 22, 1988

Sidney Tucker
 Deputy Senior Legislative Counsel
 Ministry of the Attorney General
 Appeared 10.00 a.m. March 31, 1988

1/01/017

Frank Williams
 Assistant Registrar of Regulations
 Ministry of the Attorney General
 Appeared 2.00 p.m. March 21, 1988

Suzanne Wilson, Secretary
 Cabinet Committee on Regulations
 Appeared 10.00 a.m. March 31, 1988

Russell Yurkow
 Registrar of Regulations
 Ministry of the Attorney General
 Appeared 2.00 p.m. March 21, 1988

XIII
EXHIBIT LIST

EXHIBIT NO.		DATE
1/01/001	GOUVERNEMENT DU QUEBEC - Submission dated 15 March 1988 from Michel Leclerc, Director, Regulations Office entitled "Reply to Questions concerning the Regulations Act".	21 March
1/01/002	LEGISLATIVE RESEARCH SERVICE - Letter dated February 24, 1988 addressed to Michel Leclerc.	"
1/01/003	OFFICE OF PRIVITIZATION AND REGULATORY AFFAIRS - Submission from Tony Campbell entitled "RIAS Checklist (Short Form)".	22 March
1/01/004	JOHN GODFREY - Excerpt from Senate Debates dated 11 December 1984 relating to regulations.	23 March
1/01/005	ANDREW DEKANY, COUNSEL - Excerpt from Cabinet Submissin Guidelines dated 13 October 1987 relating to regulations.	"
1/01/006	HUDSON JANISCH - Submission dated 24 March 1988 relating to the regulatory process.	March 24
1/01/007	WILLIAM BOGART - Paper dated 24 March 1988 entitled "Outline for Appearance".	"
1/01/008	ANDREW DEKANY, COUNSEL - Report dated December 1980 entitled "Special Committee on Regulatory Reform".	"
1/01/009	OFFICE OF PRIVITIZATION AND REGULATORY AFFAIRS - Two reports - 1. "Regulatory Reform Strategy"; 2. "Federal Regulatory Plan 1988".	March 22
1/01/010	SPECIAL COMMITTEE ON REGULATIONS - PROVINCE OF SASKTCHEWAN - Submission prepared by D. A. Canham relating to regulatory process.	March 29

EXHIBIT NO.		DATE
1/01/011	MINISTRY OF LABOUR - Briefing note from Tim Millard dated 28 March, 1988 entitled "Consultative Process for the Development of the Designated Substance Regulations".	March 29
1/01/012	MINISTRY OF THE ENVIRONMENT - Submission from Dr. Hewings.	"
1/01/013	MINISTRY OF THE ENVIRONMENT - Submission from Dr. Hewings entitled "Attendance at Public Meetings".	"
1/01/014	ASSEMBLÉE NATIONALE - Submission dated 1986 entitled "Lio sur les règlements".	March 30
1/01/015	ENERGY PROBE - Submission dated 30 March 1988 prepared by Paul Muldoon entitled "The Role of the Public in the Ontario Regulation-Making Process with Specific Reference to Environmental Protection Regulations".	"
1/01/016	CONSUMERS' ASSOCIATION OF CANADA (ONTARIO) - Submission dated 30 March 1988 prepared by Peggy Smyth, President.	"
1/01/017	MINISTRY OF THE ATTORNEY GENERAL - Submission dated 29 March 1988 from Sidney Tucker entitled "Regulations and the Legislative Process".	March 31
1/01/018	PHILIP KAYE, RESEARCH OFFICER - Document dated March 1988 entitled "Regulatory Reform in Ontario: Options for Change".	"
1/01/019	CANADIAN LAW INFORMATION COUNCIL - Submission dated 5 April 1988 from W. Alan Hart, Marketing Manager, Indexing Agency relating to "Public Hearings on the Regulatory Process".	April 6
1/01/020	PHILIP KAYE, RESEARCH OFFICER - Report dated 1968-69 from the House of Commons entitled "Third Report of the Special Committee on Statutory Instruments.	"

EXHIBIT NO.		DATE
1/01/021	PHILIP KAYE, RESEARCH OFFICER - Submission dated April 1988 entitled "Regulatory Reform in Ontario: Options for Change".	April 6
1/01/022	ENERGY PROBE - Submission entitled "Comments on Process for Regulation-Making Being Developed by the Ministry of Labour" dated 19 April 1988 prepared by Paul Muldoon, Counsel.	April 27
1/01/023	FRANÇOIS R. BERNIER - Submission relating to his presentation of 22 March 1988.	"
1/01/024	PAUL G. THOMAS, PROFESSOR - Submission dated 18 April 1988 relating to regulatory process.	May 25

XIV
TOPICS FOR DISCUSSION ON REGULATORY REFORM

Notice and Comment

1. What kind of system should be established in Ontario to give the public (1) advance notice of, and (2) the opportunity to comment on, proposed regulations?
2. Should there be a general provision on Notice and Comment that would apply to all regulations, subject to certain exceptions?
3. Alternatively, should there be a continuation of the practice whereby Notice and Comment procedures are incorporated in particular statutes?
4. What is the process in other jurisdictions - mainly Ottawa and Quebec?
5. How are these processes being accepted
 - a) by the public?
 - b) by the participating Departments and agencies?

Disallowance

6. Should Members of the Legislative Assembly have the power to disallow regulations?
7. If so, what kind of disallowance procedure should be established?
8. What role should the Standing Committee on Regulations and Private Bills play in that procedure?
9. What is the process in other jurisdictions and how has it worked in practice?

Mandate of the Standing Committee on Regulations and Private Bills

10. Should the Committee's guidelines for the review of regulations, as set out in the Standing Orders, be expanded to include
 - a) conformity with the Canadian Charter of Rights and Freedoms
 - b) the "unusual or unexpected" use of delegated power?

11. Should the Committee's examination of the regulatory process be explicitly authorized in its terms of reference?
12. Should the Committee be empowered to conduct a limited review of the merits of regulations?
13. Should the scope of the Committee's mandate be expanded beyond the review of regulations to include the review of
 - a) regulation ("enabling") clauses in bills
 - b) policy directives?
14. Should the Standing Orders be amended to specify a period of time within which Ministries and agencies must respond to the recommendations of the Standing Committee?

Amendments to Regulations Act

15. Should the definition of "regulation" in section 1 be amended? Should, for instance, the exceptions to the Regulations Act that are contained in other Acts be transferred to section 1?
16. Section 3 of the Act states the general rule as to the commencement of regulations. Does the section clearly state its true intent and meaning?
17. Are the powers of the Attorney General, which are set out in section 6, too broad in scope?
18. How should the powers and duties of the Registrar of Regulations be defined in the Act? They are partially set out in section 7 of the Act and in Regulation 899 under the Act.
19. Should the Registrar of Regulations or the Attorney General have the power to designate a person to act on the Registrar's behalf? Currently, the Registrar has that power under section 8 of Regulation 899.
20. Should the general regulation-making power in section 22 of the Interpretation Act be transferred to the Regulations Act?
21. Other possible amendments arising as a result of hearings.

Form of Regulations

22. Can the publication of regulations in The Ontario Gazette be improved upon from a stylistic point of view?
23. Can the format and language used be changed so as to make regulations more readily understandable to the public?
24. Should an explanatory note accompany each regulation?
25. Should the statutory authority for a regulation be identified more precisely?
26. Should the main heading of each regulation be more descriptive of the contents?

Regulations under the Planning Act, 1983 and the Parkway Belt Planning and Development Act

27. Should all regulations under these Acts be filed with the Registrar of Regulations and published in The Ontario Gazette?
28. Alternatively, can a different mechanism be established so that regulations are not required?

Sunset Clauses

29. Should there be some kind of systematic review of regulations to determine their effectiveness? If so, by whom and with what consequences?
30. Should regulations be automatically repealed at the end of a specified period of time, unless reissued or exempted under the enabling statute?

APPENDICES

- APPENDIX A – Standing Order 90(j) of the Legislative Assembly of Ontario
- APPENDIX B – Regulations Act, R.S.O. 1980, c. 446
- APPENDIX C – Regulation 899, as amended, of Revised Regulations of Ontario, 1980 under the Regulations Act
- APPENDIX D – Occupational Health and Safety Act, R.S.O. 1980, c. 321, ss. 22 and 41; Notices re: arsenic
- APPENDIX E – Industrial Standards Act, R.S.O. 1980, c. 216, ss. 7–11; Notice re: Building Trades Construction Industry, Ottawa Zone; Notice re: Men's and Boys' Clothing Industry, Ontario Zone
- APPENDIX F – Planning Act, 1983, S.O. 1983, c. 1, s. 46; Notices re: Township of Nottawasaga and Township of Scoble
- APPENDIX G – Notice re: General Air Pollution Regulation (Regulation 308 under the Environmental Protection Act)
- APPENDIX H – Attendance at Public Meetings on Regulation 308 (statistics provided by the Ministry of the Environment)
- APPENDIX I – Federal Regulatory Plan 1988, pp. 243 and 245–246 (example of format)
- APPENDIX J – The Canada Gazette Part I, March 12, 1988, pp. 957–960 (example of format)
- APPENDIX K – The Canada Gazette Part II, March 2, 1988, pp. 1248–1250 (example of format)
- APPENDIX L – Quebec Regulations Act, S.Q. 1986, c. 22; Gazette officielle du Québec, Part 2, November 25, 1987, p. 4001 (example of format)
- APPENDIX M – United States Administrative Procedure Act, 5 U.S.C., c. 5, s. 553 (enacted 1946)
- APPENDIX N – Standing Orders of the House of Commons, Chapter V
- APPENDIX O – Saskatchewan Regulations Act, R.S.S. 1978, c. R-16, s. 17
- APPENDIX P – Manitoba Regulations Act, C.C.S.M., c. R60, s. 12
- APPENDIX Q – Australian Acts Interpretation Act 1901, Act No. 2, 1901, as amended, ss. 48–49
- APPENDIX R – Regulation 537, as amended, of Revised Regulations of Ontario, 1980 under the Interpretation Act
- APPENDIX S – The Ontario Gazette, March 19, 1988, pp. 1703–1705 (example of format)

- APPENDIX T - Table of Regulations, filed under the Regulations Act to the 31st day of December 1987, pp. 1-3 (example of format)
- APPENDIX U - Parkway Belt Planning and Development Act, R.S.O. 1980, c. 368, s. 4
- APPENDIX V - Niagara Escarpment Planning and Development Act, R.S.O. 1980, c. 316, as amended, ss. 22-23
- APPENDIX W - Queensland Regulatory Reform Act 1986, Act No. 14 of 1986
- APPENDIX X - Cabinet Office, "Information Sheet for Regulations"
- APPENDIX Y - Citizens' Code of Regulatory Fairness, 1986 (federal)

APPENDIX A

Standing Order 90(j) of the Legislative Assembly of Ontario

- (j) Standing Committee on Regulations and Private Bills to be the Committee to which all Private Bills, other than Estate Bills or Bills providing for the consolidation of a floating debt or renewal of debentures, other than local improvement debentures, of a municipal corporation, shall be referred after first reading; and, to be the Committee provided for by section 12 of the *Regulations Act*, and having the terms of reference as set out in that section, namely: to examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, but in so doing regard shall be had to the following guidelines:

- (1) Regulations should not contain provisions initiating new policy, but should be confined to details to give effect to the policy established by the statute;
- (2) Regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties;
- (3) Regulations should be expressed in precise and unambiguous language;
- (4) Regulations should not have retrospective effect unless clearly authorized by statute;
- (5) Regulations should not exclude the jurisdiction of the courts;
- (6) Regulations should not impose a fine, imprisonment or other penalty;
- (7) Regulations should not shift the onus of proof of innocence to a person accused of an offence;
- (8) Regulations should not impose anything in the way of a tax (as distinct from fixing the amount of a licence fee, or the like); and
- (9) General powers should not be used to establish a judicial tribunal or an administrative tribunal;

and, the Committee shall from time to time report to the House its observations, opinions and recommendations as required by section 12 (3) of the *Regulations Act*, but before drawing the attention of the House to a regulation or other statutory instrument the Committee shall afford the ministry or agency concerned an opportunity to furnish orally or in writing to the Committee such explanation as the ministry or agency thinks fit. [Provisional.]

APPENDIX B

Regulations Act
R.S.O. 1980, c. 446

CHAPTER 446

Regulations Act

1. In this Act,

Interpre-
tation

- (a) "file" means file in the manner prescribed in section 2;
- (b) "Minister" means the member of the Executive Council to whom the administration of this Act is assigned by the Lieutenant Governor in Council;
- (c) "Registrar" means the Registrar of Regulations;
- (d) "regulation" means a regulation, rule, order or by-law of a legislative nature made or approved under an Act of the Legislature by the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council, but does not include,
 - (i) a by-law of a municipality or local board as defined in the *Municipal Affairs Act*, R.S.O. 1980,
c. 303
 - (ii) a regulation made under *The Broker-Dealers Act*, 1947, c. 8 1947, c. 8
Act, 1947, the *Teaching Profession Act*, section R.S.O. 1980,
cc. 495, 59,
 78 of the *Cemeteries Act* or by an authority under 85, 410, s
 section 30 of the *Conservation Authorities Act*, or
 a by-law of a hospital made under the *Public Hospitals Act*, or the constitution and by-laws of an association made under the *Agricultural Associations Act*,
 - (iii) an order of the Ontario Municipal Board, other than an order prescribing the rules governing proceedings before the Board,
 - (iv) an order, direction or designation of the Lieutenant Governor in Council under section 7, 29, 40, 41, 42, 44 or 65 of the *Public Transportation and Highway Improvement Act* or a designation by the Minister of Transportation and Communications under section 43 or 91 of that Act, R.S.O. 1980,
c. 421

(v) a schedule of classifications for civil servants, including qualifications, duties and salaries prescribed under the *Public Service Act*, or

R.S.O. 1980,
c. 418

(vi) an order, approval, regulation, prescription, direction or instruction of the Minister of Intergovernmental Affairs or the Ministry of Intergovernmental Affairs that the Minister or the Ministry is empowered to give or make under the *Municipal Act* or under the *Municipal Affairs Act*, except clause 6 (b) thereof. R.S.O. 1970, c. 410, s. 1; 1971, c. 61, s. 1; 1972, c. 1, ss. 1, 100 (2). 104 (6); 1972, c. 3, s. 17.

R.S.O. 1980,
cc. 302, 303

**Filing
required**

2.—(1) Every regulation shall be filed in duplicate with the Registrar together with a certificate in duplicate of its making signed by the authority making it or a responsible officer thereof and, where approval is required, with a certificate of approval in duplicate signed by the authority so approving or by a responsible officer thereof, except that in the case of a regulation made by a minister that does not require approval, no certificate is required.

**Copy from
Executive
Council**

(2) Where a regulation is made or approved by the Lieutenant Governor in Council, the filing with the Registrar of two copies of it certified to be true copies by the Clerk of the Executive Council shall be deemed to be compliance with subsection (1). R.S.O. 1970, c. 410, s. 2.

**Commence-
ment**

3. Unless otherwise stated in it, a regulation comes into force and has effect on and after the day upon which it is filed. R.S.O. 1970, c. 410, s. 3.

**Failure
to file**

4. Except where otherwise provided, a regulation that is not filed has no effect. R.S.O. 1970, c. 410, s. 4.

Publication

5.—(1) Every regulation shall be published in *The Ontario Gazette* within one month of its filing.

**Extension
of time for
publication**

(2) The Minister may at any time by order extend the time for publication of a regulation and the order shall be published with the regulation.

**Effect of
non-
publication**

(3) A regulation that is not published is not effective against a person who has not had actual notice of it.

(4) Publication of a regulation,

Effect of
publication

- (a) is *prima facie* proof of its text and of its making, its approval where required, and its filing; and
- (b) shall be deemed to be notice of its contents to every person subject to it or affected by it,

and judicial notice shall be taken of it, of its contents and of its publication. R.S.O. 1970, c. 410, s. 5.

6. The Minister may,Powers of
Minister

- (a) determine whether a regulation, rule, order or by-law is a regulation within the meaning of this Act and his decision is final;
- (b) determine who shall be deemed responsible officers within the meaning of section 2; and
- (c) determine any matter that may arise in connection with the administration of this Act. R.S.O. 1970, c. 410, s. 6.

7.—(1) There shall be a Registrar of Regulations appointed by the Lieutenant Governor in Council who,

Registrar

- (a) is responsible for the numbering and indexing of all regulations filed in his office and for their publication; and
- (b) shall exercise such powers and perform such duties as are vested in or imposed upon him by this Act, the regulations made hereunder, or the Minister.

(2) The Registrar may issue a certificate as to the filing of a regulation and every such certificate is *prima facie* proof of the facts stated in it without any proof of appointment or signature.

Certificate
of Registrar

(3) Where a map or plan,

Filing of
maps or
plans

- (a) forms part of a regulation for the purpose of illustrating a description of land; and
- (b) is identified in the regulation by a number given to it by the Registrar,

and the regulation states that the map or plan is filed in the office of the Registrar, he may in his discretion

file the map or plan in his office in numerical order and no publication of the map or plan is necessary. R.S.O. 1970, c. 410, s. 7.

Numbering **8.** Regulations shall be numbered in the order in which they are filed, and a new series shall be commenced each year. R.S.O. 1970, c. 410, s. 8.

Citation **9.** A regulation may be cited or referred to as "Ontario Regulation" or "O. Reg." followed by its filing number, a virgule and the last two figures of the year of its filing. R.S.O. 1970, c. 410, s. 9.

Regulations **10.**—(1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing the powers and duties of the Registrar;
- (b) prescribing the form, arrangement and scheme of regulations;
- (c) prescribing a system of indexing;
- (d) providing for the preparation and publication of a consolidation or codification of regulations that have been filed, and for the preparation and publication of supplements thereto;
- (e) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

Consolidation, codification (2) Publication of a regulation in a consolidation or codification or supplement thereto mentioned in clause (1) (d) shall be deemed publication within the meaning of this Act. R.S.O. 1970, c. 410, s. 10.

Defects not corrected **11.** The filing or publication of a regulation under this Act does not have the effect of validating or correcting any such regulation that is otherwise invalid or defective in any respect or for any reason. R.S.O. 1970, c. 410, s. 11.

Standing Committee on Regulations **12.**—(1) At the commencement of each session of the Legislature a standing committee of the Assembly shall be appointed, to be known as the Standing Committee on Regulations, with authority to sit during the session.

Regulations referred (2) Every regulation stands permanently referred to the Standing Committee on Regulations for the purposes of subsection (3).

(3) The Standing Committee on Regulations shall examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, and shall deal with such other matters as are referred to it from time to time by the Assembly. ^{Terms of reference}

(4) The Standing Committee on Regulations may examine any member of the Executive Council or any public servant designated by any such member respecting any regulation made under an Act that is under his administration. ^{Authority to call persons}

(5) The Standing Committee on Regulations shall, from time to time, report to the Assembly its observations, opinions and recommendations. ^{Report} R.S.O. 1970, c. 410, s. 12.

APPENDIX C

Regulation 899, as amended, of
Revised Regulations of Ontario, 1980 under the Regulations Act

REGULATION 899

under the Regulations Act

GENERAL

1. The Registrar shall advise upon and assist in the preparation of regulations. R.R.O. 1970, Reg. 781, s. 1.

2. Where a regulation includes a sketch or illustration, it shall be a line cut and not greater than 2½ inches in width and the cut, plate or other device necessary in the printing of the sketch or illustration shall be delivered to the Registrar when the regulation is filed. R.R.O. 1970, Reg. 781, s. 2.

3. When a regulation is filed, the Registrar shall mark the number assigned to the regulation, the word "Filed" and the day, month and year of filing upon the regulation and he shall evidence such marking by his signature. R.R.O. 1970, Reg. 781, s. 3.

4. Filed regulations shall be available for public inspection. R.R.O. 1970, Reg. 781, s. 4.

5. In publishing regulations, the Registrar may correct clerical, grammatical or typographical errors and, for the purpose of obtaining a uniform mode of expression, may alter the numbering and arrangement of any provision and may make such alterations in language or punctuation as are of an editorial nature. R.R.O. 1970, Reg. 781, s. 5.

6. The Registrar shall maintain a register and, upon the filing of a regulation, the Registrar shall enter in the register,

- (a) the number assigned to the regulation;
- (b) the subject-matter of the regulation;
- (c) the Act authorizing the making of the regulation;
- (d) the Ministry or other authority filing the regulation; and
- (e) a statement indicating whether or not the regulation replaces or amends other regulations and a reference to the numbers of the regulations so replaced or amended. R.R.O. 1970, Reg. 781, s. 6.

7. The Registrar shall maintain an Act index and, upon the filing of a regulation, the Registrar shall enter in the Act index the numbers of all regulations made under each Act. R.R.O. 1970, Reg. 781, s. 7.

8. The Registrar may designate any solicitor in the office of the Legislative Counsel or Registrar of Regulations as Assistant Registrar of Regulations to perform the duties of the Registrar under this Regulation in his place and stead. R.R.O. 1970, Reg. 781, s. 8.

APPENDIX D

Occupational Health and Safety Act, R.S.O. 1980, c. 321, ss. 22 and 41

Notices re: arsenic

22. Prior to a substance being designated under paragraph 14 of subsection 41 (2), the Minister, Designation
of
substances

- (a) shall publish in *The Ontario Gazette* a notice stating that the substance may be designated and calling for briefs or submissions in relation to the designation; and
- (b) shall publish in *The Ontario Gazette* a notice setting forth the proposed regulation relating to the designation of the substance at least sixty days before the regulation is filed with the Registrar of Regulations. 1978, c. 83, s. 22.

* * *

Regula-
tions

41.—(1) The Lieutenant Governor in Council may make such regulations as are advisable for the health or safety of persons in or about a work place.

Idem

(2) Without limiting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,

* * *

- 14. prescribing any biological, chemical or physical agent or combination thereof as a designated substance;

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THE ONTARIO GAZETTE [November 13, 1982]

NOTICE OF INTENTION
NOTICE OF INTENTION TO DESIGNATE
SUBSTANCES UNDER THE
OCCUPATIONAL HEALTH AND SAFETY ACT,
Section 22, by the Minister of Labour

TAKE NOTICE that the substances hereinafter listed may be designated as substances to which the exposure of a worker is prohibited, regulated, restricted, limited or controlled by regulation under the *Occupational Health and Safety Act*:

acrylonitrile
arsenic
benzene
formaldehyde

TAKE NOTICE that briefs or submissions are called for as to whether the substances or any of them should be designated and that such briefs or submissions are to be submitted within 60 days of the publication of this notice in THE ONTARIO GAZETTE.

FURTHER TAKE NOTICE that ample opportunity will be given to submit briefs and submissions on the substance and content of any regulations respecting the designation of the substances before such regulations are filed with the Registrar of Regulations.

Briefs and submissions on the designation of substances or any of them should be addressed to:

Designation of Substances Project,
1982,
Standards and Programs Branch,
Ministry of Labour,
400 University Avenue,
Toronto, Ontario M7A 1T7.

Dated at Toronto, this 9th day of November, 1982.

(1675) 46

RUSSELL H. RAMSAY,
Minister of Labour.

3666

THE ONTARIO GAZETTE [August 6, 1983]

Occupational Health and Safety Act

Proposed Regulations
under the
Occupational Health and Safety Act, R.S.O. 1980, c. 321

MINISTRY OF LABOUR

NOTICE OF PROPOSED REGULATIONS

On Saturday November 13, 1982 I published in The Ontario Gazette, a Notice of Intention under the Occupational Health and Safety Act R.S.O. 1980, c. 321 (the Act) stating that eight substances may be designated by regulation. The Notice called for briefs or submissions in relation to the designation.

Notice is hereby given of the following proposed regulations relating to the designation of:

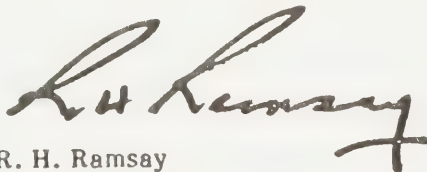
Acrylonitrile
Arsenic

Attention is called to the provisions of section 22(b) of the Act, providing that the regulations may be filed with the Registrar of Regulations sixty days after the publication of the proposed regulations in The Ontario Gazette.

Comments on the proposed regulations should be submitted by September 7, 1983 to:

Designated Substances Project
Standards and Programs Branch
Ministry of Labour
400 University Avenue
Toronto, Ontario
M7A 1T7

Comments received may be made available for public examination.



R. H. Ramsay
Minister of Labour

**PROPOSED REGULATION RESPECTING ARSENIC
- MADE UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT**

MINISTRY OF LABOUR
OCCUPATIONAL HEALTH AND SAFETY DIVISION

August 6, 1983

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AND RELATED CODES

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THE ONTARIO GAZETTE
PROPOSED REGULATION MADE UNDER THE
OCCUPATIONAL HEALTH AND SAFETY ACT

DESIGNATED SUBSTANCE - ARSENIC

1. In this Regulation,
 - (a) "arsenic" means arsenic in its elemental form and arsenic in inorganic compounds and includes arsenic in organic form only where both inorganic and organic compounds of arsenic are present;
 - (b) "joint health and safety committee" includes a joint health and safety committee established under section 8 of the Act, a committee of like nature and the workers or their representatives who participate in an arrangement, program or system conforming to subsection 8(2) of the Act;
 - (c) "m³" means cubic metre;
 - (d) "µg" means micrograms.
2. Arsenic is prescribed as a designated substance.
3. (1) Subject to subsection (3), this Regulation applies to every employer and worker at a work place where arsenic is present, produced, processed, mined, used, handled or stored and at which a worker is likely to inhale, ingest, absorb or come into contact with arsenic.

(2) Subject to subsection (3), an employer to whom this Regulation applies shall take every precaution reasonable in the circumstances to ensure that every worker who is not an employee of the employer but

* * *

APPENDIX E

Industrial Standards Act, R.S.O. 1980, c. 216, ss. 7-11

Notice re: Building Trades Construction Industry, Ottawa Zone

Notice re: Men's and Boys' Clothing Industry, Ontario Zone

**Powers of
Director**

7.—(1) The Director has jurisdiction and authority,

- (a) to administer and enforce this Act, the regulations and the schedules;**
- (b) to hear appeals from the decisions of any advisory committee;**
- (c) subject to subsection (2) and subject to the approval of the Lieutenant Governor in Council, and with the concurrence of the proper advisory committee, to amend any schedule, after giving notice of the terms of the proposed amendment by publication thereof at least once in each of two consecutive weeks in a newspaper having general circulation in the zone in which the schedule is in force;**
- (d) to require any employer to pay to the Director the arrears of wages owing to an employee or employees according to any schedule and in his discretion to direct that the whole or a part of such wages be either forfeited to the Crown or paid to the employee or employees entitled thereto;**

(e) to determine and designate which industries are interprovincially competitive, and with respect to any such industry,

(i) may approve or withhold approval of a schedule with respect to the collection of revenue from employers and employees in the industry and with respect to the exercise by the advisory committee of any powers in connection with the collection of such assessments and the disbursement of moneys collected, except that the assessments that may be approved shall not exceed one-half of one per cent of an employee's wages and one-half of one per cent of an employer's pay-roll,

(ii) may require the advisory committee to furnish estimates of receipts and expenses annually, and to furnish quarterly reports, certified by an auditor approved by the Director, accounting for all money collected and disbursed.

(2) Where a schedule applies to a zone that is the whole of Ontario, publication of the terms of the proposed amendment in at least five newspapers designated by the Minister is sufficient notice for the purposes of clause (1)(c). Publication of amendment to schedule applying to whole of Ontario R.S.O. 1970, c. 221, s. 7.

8.—(1) The Minister may, upon the petition of representatives of employers or employees in an industry in a designated zone or zones, authorize an officer to convene a conference of the employers and employees in the industry for the purpose of investigating and considering the conditions of labour and the practices prevailing in the industry and for negotiating with respect to any of the matters enumerated in subsection 9 (1), and, subject to subsection (3), notice of the conference shall be given by publication thereof at least once in each of two consecutive weeks in a newspaper having general circulation in the zone for which the conference is to be held. Officer may convene conference

(2) The conference may submit to the Minister, through the officer who convenes the conference, a schedule in accordance with subsection 9 (1). Submission of schedule

(3) Where the zone referred to in subsection (1) is the whole of Ontario, notice of the conference shall be given by publication thereof at least once in each of two consecutive weeks in at least five newspapers as determined by the Minister. Notice of conference where zone is whole of Ontario R.S.O. 1970, c. 221, s. 8.

What
schedule
may
provide

9.—(1) A schedule may,

- (a) establish the maximum number of hours comprising the regular working day and prescribe the hours of the day during which such hours of work are to be performed ;
- (b) establish the maximum number of hours comprising the regular working week ;
- (c) establish the minimum rates of wages for the regular working periods ;
- (d) establish the particular days in the week for the performance of labour in the industry ;
- (e) establish the rates of wages and the periods for, and the conditions governing, overtime work ;
- (f) establish vacations with pay or payment in lieu thereof and payment for any day that may be designated as a holiday in the schedule ;
- (g) classify the employees and employers and separately provide for each classification with respect to any of the matters that may be dealt with in the schedule ;
- (h) define any term used in the schedule ;
- (i) specify the particular operations that are included in the industry and prescribe the conditions under which the operations are included ;
- (j) prohibit overtime work without a permit and authorize the advisory committee to issue the permits subject to the terms and conditions of the schedule ;
- (k) fix the minimum charge that is to be paid, accepted or contracted for with respect to the labour content of any service, work, operation or art and, with the approval of the Director, fix the minimum charge that an employer or employee is to contract for or accept for any service, work, operation or art ;
- (l) authorize the advisory committee to fix a minimum rate of wages lower than the rate fixed by the schedule for any classification of employees or for any individual who performs work included in more than one classification of employees, or whose work is only partly subject to the schedule, or who is handicapped ;

(m) subject to the approval of the Director and with respect only to an interprovincially competitive industry, assess employers only or employers and employees in any such industry to provide revenue for the enforcement of the schedule, and authorize the advisory committee generally to administer and enforce the schedule, and to collect the assessments, and out of the revenue collected to engage inspectors and other personnel and to make such expenditures as are necessary for such administration and enforcement.

(2) When the advisory committee fixes a minimum rate of wages lower than the rate fixed by the schedule, such lower rate shall be deemed to be the rate fixed by the schedule. R.S.O. 1970, c. 221, s. 9.

When
advisory
committee
fixes rate
lower than
schedule

10.—(1) The Minister may direct the officer who convenes a conference to conduct further investigations into the conditions of labour and the practices prevailing in the industry, and the officer may recommend variations in the schedule proposed by the conference.

Investiga-
tion of
conditions
and practices

(2) If, in the opinion of the Minister, the schedule submitted by the conference is agreed to by a proper and sufficient representation of employers and employees, the Minister may approve the schedule submitted by the conference with such variations recommended by the officer convening the conference as the Minister considers desirable.

Approval of
schedule by
Minister

(3) Upon the recommendation of the Minister, the Lieutenant Governor in Council may declare the schedule to be in force during pleasure and to be binding upon all employers and employees in a designated industry and zone. R.S.O. 1970, c. 221, s. 10.

Declaring
schedule
in force

11. Every employer affected by a schedule shall cause a copy of the schedule to be posted in a conspicuous place where his employees are engaged in their duties so that it may be readily seen and read by them and shall cause the schedule to be there maintained so long as it remains in force. R.S.O. 1970, c. 221, s. 11.

Posting of
schedule



Ontario
Ministry of
Labour

INDUSTRIAL STANDARDS ACT OTTAWA ZONE

Whereas the Minister of Labour has designated a part of Ontario as the Ottawa Zone as described in paragraph 6 of Appendix A to Regulation 456, R.R.O. 1970, made under The Industrial Standards Act;

And Whereas the Building Trades Construction Industry has been designated as an industry under the said Regulation for the purposes of The Industrial Standards Act, the industry being defined as all work done by:

- (a) bricklayers and stonemasons;
- (b) carpenters and joiners;
- (c) electricians;
- (d) lathers;
- (e) painters, decorators and paper-hangers;
- (f) plasterers;
- (g) plumbers and steam fitters; and
- (h) sheet metal workers;

And Whereas the Minister of Labour is amending the designation of the Building Trades Construction Industry by deleting therefrom all work done by carpenters and joiners;

And Whereas the Minister of Labour has authorized Barry Cook, an Industrial Standards Officer, to convene a conference of the employers and employees in the said Industry;

Take Notice that, pursuant to section 8 of The Industrial Standards Act, a conference of the employers and employees in the above mentioned Industry as amended in the Ottawa Zone is convened to meet at Algonquin College, Room C346, Woodroffe Campus, 1385 Woodroffe Avenue, Ottawa, Ontario on 28th day of August, 1979, at the hour of 7:15 P.M. for the purpose of investigating and considering the conditions of labour and the practices prevailing in the said Industry and for negotiating and submitting to the Minister of Labour a schedule of wages and hours and days of labour;

And Further Take Notice that the employers and employees who attend such conference are authorized by The Industrial Standards Act to negotiate a schedule and, upon the approval and recommendation of the Minister of Labour, the Lieutenant Governor-in-Council, may declare that such schedule shall be binding upon all employers and employees in such Industry; And Further Take Notice that any employers or employees engaged in such Industry who fail to attend or make representation at such conference will be deemed to be content with the terms of a schedule evolving from the conference.

Dated at Toronto, this 26th day of June, 1979.

Robert G. Egle, M.D.
Minister of Labour

Notice under s. 7(1)(c) and (2) re: Men's and Boys' Clothing Industry, Ontario Zone

**NOTICE OF PROPOSED AMENDMENT
MEN'S & BOYS' CLOTHING INDUSTRY
ONTARIO REGULATION 522/80**

MADE UNDER THE INDUSTRIAL STANDARDS ACT

1 Section 5 of the Schedule to Regulation 522 of Revised Regulations of Ontario, 1980, as amended by subsection 1(6) of Ontario Regulation 736/83, is revoked and the following substituted therefor.

5 - (1) The minimum hourly rate of wages for work performed in the industry during the regular working periods by employees classified in subsection 4(1) is,

(a) in the regional Municipalities of Halton, Peel, Durham, Hamilton-Wentworth and York, and in the Municipality of Metropolitan Toronto, for,

(i) Class A, \$6 95,	(xii) Class L, \$5 68,
(ii) Class B, \$6 73,	(xiii) Class M, \$5 63,
(iii) Class C, \$6 67,	(xiv) Class N, \$5 57,
(iv) Class D, \$6 51,	(xv) Class O, \$5 51,
(v) Class E, \$6 39,	(xvi) Class P, \$5 46,
(vi) Class F, \$6 23,	(xvii) Class Q, \$5 41,
(vii) Class G, \$5 95,	(xviii) Class R, \$5 34,
(viii) Class H, \$5 90,	(xix) Class S, \$5 29,
(ix) Class I, \$5 85,	(xx) Class T, \$5 24,
(x) Class J, \$5 79,	and
(xi) Class K, \$5 73,	(xxi) Class U, \$5 12,

(b) in all parts of Ontario other than those described in clause (a), for,

(i) Class A, \$6 26,	(xii) Class L, \$5 11,
(ii) Class B, \$6 06,	(xiii) Class M, \$5 07,
(iii) Class C, \$6 00,	(xiv) Class N, \$5 01,
(iv) Class D, \$5 86,	(xv) Class O, \$4 96,
(v) Class E, \$5 75,	(xvi) Class P, \$4 91,
(vi) Class F, \$5 61,	(xvii) Class Q, \$4 87,
(vii) Class G, \$5 36,	(xviii) Class R, \$4 81,
(viii) Class H, \$5 31,	(xix) Class S, \$4 76,
(ix) Class I, \$5 27,	(xx) Class T, \$4 72,
(x) Class J, \$5 21,	and
(xi) Class K, \$5 16,	(xxi) Class U, \$4 61

(2) The minimum hourly rate of wages for work performed in the industry during the regular working periods by employees classified in subsection 4(2) is,

(a) in the regional municipalities of Halton, Peel, Durham, Hamilton-Wentworth, York and the Municipality of Metropolitan Toronto, for,

(i) Class A, \$5 85,	(vii) Class G, \$4 85,
(ii) Class B, \$5 63,	(viii) Class H, \$4 75,
(iii) Class C, \$5 51,	(ix) Class I, \$4 68,
(iv) Class D, \$5 29,	and
(v) Class E, \$5 07,	(x) Class J, \$4 63,
(vi) Class F, \$4 97,	

(b) in parts of Ontario other than those described in clause (a), for,

(i) Class A, \$5 27,	(vii) Class G, \$4 37,
(ii) Class B, \$5 07,	(viii) Class H, \$4 35,
(iii) Class C, \$4 96,	(ix) Class I, \$4 35,
(iv) Class D, \$4 76,	and
(v) Class E, \$4 56,	(x) Class J, \$4 35
(vi) Class F, \$4 47,	

(3) The minimum hourly rate of wages for work performed in the industry during the regular working periods, by employees classified in subsection 4(3) is, for, (i) Class A, \$5 68, (ii) Class B, \$5 19, and (iii) Class C, \$4 75.

(4) In this section "learner" means a person who has not had previous experience in the classification of work for which the person is hired or at which the person performs work as an employee for the employer and such person shall cease to be a learner when the person reaches the minimum rate per hour set out for the classification of work in which the person is employed.

(5) The minimum hourly rate of wages for learners is,

(a) for the first three months of experience, \$4 35;	(g) after 18 months of experience, \$5 80,
(b) after the first three months of experience, \$4 35;	(h) after 21 months of experience, \$6 10;
(c) after six months of experience, \$4 60;	(i) after 24 months of experience, \$6 40,
(d) after nine months of experience, \$4 90;	(j) after 27 months of experience, \$6 70, and
(e) after 12 months of experience, \$5 20;	(k) after 30 months of experience, \$6 95.
(f) after 15 months of experience, \$5 50,	

(6) Where the employees are governed by the Schedule, the number of learners employed in an establishment shall not exceed 20 per cent of the total number of employees in the establishment.

3 This Regulation comes into force on the 10th day after publication thereof in The Ontario Gazette under the Regulations Act.

WE CONCUR,

ADVISORY COMMITTEE FOR THE MEN'S AND BOYS' CLOTHING INDUSTRY IN THE ONTARIO ZONE:

Sam Fox, Chairman
M. E. Enkin, Vice-Chairman
Jeffrey Otis, Member
Paul Mancini, Member
J. Matraia, Member
John R. Scott, Director of Labour Standards

Subject to the approval of the Lieutenant Governor in Council, the proposed amendment to the Schedule may be binding on all employers and employees in the Men's & Boys' Clothing Industry, Ontario Zone. Representations respecting this proposed amendment to the Schedule may be made to John R. Scott, Director, Employment Standards Branch, 400 University Avenue, Toronto, Ontario, M7A 1V2.

DATED AT TORONTO, THIS 2ND DAY OF SEPTEMBER, 1986.

Ministry of Labour
 Ontario

APPENDIX F

Planning Act, 1983, S.O. 1983, c. 1, s. 46

Notices re: Township of Nottawasaga and Township of Scoble

46.—(1) The Minister may by order,

Power of
Minister re
zoning and
subdivision
control

- (a) in respect of any land in Ontario, exercise any of the powers conferred upon councils by section 34, but subsections (12) to (31) of that section do not apply to the exercise of such powers; and
- (b) in respect of any land in Ontario, exercise the powers conferred upon councils by subsection 49 (4).

(2) Where an order has been made under clause (1) (a), the Minister, in respect of the lands affected by the order, has all the powers in respect of such order as a committee of adjustment has under subsections 44 (1) and (2) in respect of a by-law passed under section 34, but the provisions of subsections 44 (4) to (8) and (10) to (20) do not apply to the exercise by the Minister of such powers.

Power of
Minister to
allow minor
variances

(3) In the event of a conflict between an order made under clause (1) (a) and a by-law that is in effect under section 34 or 37, or a predecessor thereof, the order prevails to the extent of such conflict, but in all other respects the by-law remains in full force and effect.

Order
prevails
over by-law
in event
of conflict

(4) Where the Minister so provides in the order, an order made under clause (1) (a) in respect of land situate in a municipality the council of which has the powers conferred by section 34 shall be deemed for all purposes except the purposes of section 24 to be a by-law passed by the council of the municipality in which the land is situate and to be in force in the municipality.

Where order
deemed
by-law of
municipality

(5) No notice or hearing is required prior to the making of an order under subsection (1) but the Minister shall give notice of any such order within thirty days of the making thereof in such manner as he considers proper and shall set out in the notice the provisions of subsections (8), (9) and (10).

Notice

Idem

(6) The Minister shall cause a duplicate or certified copy of an order made under clause (1) (a),

- (a) where the land affected is situate in a local municipality, to be lodged in the office of the clerk of the municipality, or where the land affected is situate in two or more local municipalities, in the office of the clerk of each of such municipalities and the provisions of subsection 78 (2) of the *Municipal Act* apply with necessary modifications; and

R.S.O. 1980,
c. 302

- (b) where the land affected is situate in territory without municipal organization, to be lodged in the proper land registry office, where it shall be made available to the public as a production.

Registration

(7) The Minister shall cause a certified copy or duplicate of an order made under clause (1) (b) to be registered in the proper land registry office.

Revocation or amendment	(8) The Minister may, on his own initiative or at the request of any person, by order, amend or revoke in whole or in part any order made under subsection (1).	
Notice	(9) Except as provided in subsection (10), the Minister before amending or revoking in whole or in part an order made under subsection (1) shall give notice or cause to be given notice thereof in such manner as he considers proper and shall allow such period of time as he considers appropriate for the submission of representations in respect thereof.	
Hearing by O.M.B.	(10) Where an application is made to the Minister to amend or revoke in whole or in part any order made under subsection (1), the Minister may, and on the request of any person shall, request the Municipal Board to hold a hearing on the application and thereupon the Board shall hold a hearing as to whether the order should be amended or revoked in whole or in part.	
Refusal of request by Minister	(11) Despite subsection (10), where the Minister is of the opinion that a request of any person made under subsection (10) is not made in good faith or is frivolous or vexatious or is made only for the purpose of delay, he may refuse the request.	
Notice of hearing	(12) Where the Minister has requested the Municipal Board to hold a hearing as provided for in subsection (10), notice of the hearing shall be given in such manner and to such persons as the Board may direct, and the Board shall hear any submissions that any person may desire to bring to the attention of the Board.	
	(13) The Municipal Board after the conclusion of the hearing shall make a decision to either amend or revoke the order in whole or in part or refuse to amend or revoke the order in whole or in part and the Minister shall, except as provided in subsection (16), give effect to the decision of the Board.	Decision of O.M.B.
	(14) A copy of the decision of the Municipal Board shall be sent to each person who appeared at the hearing and made representation and to any person who in writing requests a copy of the decision.	Notification of decision
	(15) Where the Minister has requested the Municipal Board to hold a hearing as provided for in subsection (10), if he is of the opinion that a matter of provincial interest is, or is likely to be adversely affected by the requested revocation or amendment, he may so advise the Municipal Board in writing not later than thirty days before the day fixed by the Board for the hearing of the application.	Where provincial interest adversely affected
	(16) Where the Municipal Board has received notice from the Minister under subsection (15) and has made a decision on the requested revocation or amendment the Minister shall not give effect to the decision under subsection (13) unless the Lieutenant Governor in Council has confirmed the decision.	Decision where provincial interest
	(17) The Lieutenant Governor in Council may confirm, vary or rescind the decision of the Municipal Board where notice of a matter of provincial interest was given under subsection (15) and in doing so may direct the Minister to amend or revoke the order in whole or in part.	Disposition by L.G. in C.
	(18) An order of the Minister made under clause (1) (b) has the same effect as a by-law passed under subsection 49 (4).	Effect of land use order

THE PLANNING ACT

NOTICE

Application to Revoke Minister's Zoning Order Ontario Regulation 675, Revised Regulations of Ontario, 1970, as amended

Take notice that an application to revoke the comprehensive zoning order affecting the Township of Nottawasaga and filed as Regulation 675 of Revised Regulations of Ontario, 1970, as amended by over six hundred amendments, has been received by the Minister of Municipal Affairs.

Background: Regulation 675 of RRO 1970 has provided zoning regulation under the Planning Act in the Township of Nottawasaga since 1970, and has been amended many times since then for individual properties. The Township Council passed a comprehensive zoning by-law: By-law No. 16-87, on May 19, 1987, and has requested that the Minister's comprehensive zoning order, as amended, be revoked to enable the zoning by-law to come into effect.

Applicant: The Township of Nottawasaga

File No.: 43-ZO-021-87-26

Proposal: The Township of Nottawasaga has requested that Regulation 675 of RRO 1970, including all the amendments thereto, be revoked so that zoning control by other means may supersede the control by that Minister's order as amended.

All submissions in support of, or in opposition to, the application described above, and received by the Ministry of Municipal Affairs, 777 Bay Street, 14th Floor, Toronto, Ontario M5G 2E5 on or before the 6th day of August, 1987, will be fully considered before a final decision is made. Please refer to the file number indicated above.

In addition, under Section 46 (10) of the Planning Act, 1983 any interested person may request a hearing by the Ontario Municipal Board on an application to amend a zoning order or to revoke it in whole or in part.



Ministry of
Municipal
Affairs
Ontario Bernard Grandmaître, Minister



**NOTICE OF APPLICATION FOR
AMENDMENT TO MINISTER'S ZONING ORDER
219/78
TOWNSHIP OF SCOBLE**

Take notice that application to amend the Zoning Order filed as Ontario Regulation 219/78 has been received by the Minister of Municipal Affairs.

The application is:

Applicant: Mr. Les Ward

File No.: 68-ZO-01887-08

Proposal: To reduce the lot frontage requirement to 22m to permit access to a land from 100m to lock lot. The lands in question are located in part of Mining Location R-241.

All submissions in support of, or in opposition to, the application described above, and received by the Minister of Municipal Affairs, 14th Floor, 777 Bay Street, Toronto, M5G 2E5, on or before the 15th day of January, 1988 will be fully considered before a final decision is made. Please refer to the file number indicated above.

In addition, under Section 46(10) of the Planning Act, 1983, any interested person may request a hearing by the Ontario Municipal Board on an application for amendment to a Zoning Order.



Ontario

Ministry of
Municipal
Affairs

John Eskins, Minister

APPENDIX G

Notice re: General Air Pollution Regulation
(Regulation 308 under the Environmental Protection Act)

NOTICE OF PUBLIC MEETING

PUBLIC INVITED TO COMMENT ON PROPOSED REFORMS TO AIR POLLUTION REGULATION

Environment Ontario is proposing fundamental changes to the General Air Pollution Regulation (308) under the Environmental Protection Act. These proposed reforms are designed to improve air quality and reduce toxic fallout in Ontario by controlling pollution at the source.

Members of the public, representatives of environment groups and industry, and anyone who has an interest in this issue are welcome to examine and comment on the proposals.

The ministry will host a public information meeting in your area on January 20, 1988. The meeting will be held at The Hotel Plaza II, Asquith Room, 90 Bloor St. E., Toronto, Ontario.

A drop-in session will run from 3 p.m. to 5:30 p.m. and a formal session will begin at 7:30 p.m. Ministry staff will be present at both meetings to answer your questions and receive your comments.

Copies of the discussion paper on Regulation 308 — which outlines the new air emission control strategy and proposals for implementing that strategy — can be obtained in English or French by writing or calling:

Public Information Centre
Ministry of the Environment
135 St. Clair Ave. West
Toronto, Ontario
M4V 1P5
(416) 323-4321

The ministry also invites your written comments, criticisms and suggestions on the proposed reforms. Please submit them no later than March 31, 1988 to:

Jim Bradley
Minister of the Environment
135 St. Clair Ave. West
Toronto, Ontario
M4V 1P5



Environment
Ontario

STOPPING
AIR POLLUTION
AT ITS SOURCE



APPENDIX H

**Attendance at Public Meetings on Regulation 308
(statistics provided by the Ministry of the Environment)**

ATTENDANCE AT PUBLIC MEETINGS

	<u>PETERBOROUGH</u>	<u>KITCHENER</u>	<u>TORONTO (1)</u>	<u>LONDON</u>
AFTERNOON	5	2	10	2
EVENING	16	2	22	5
MEDIA	1 TV 1 NEWSPAPER	1 TV 1 RADIO 1 NEWSPAPER	1 TV	1 TV 1 RADIO
	<u>WINDSOR</u>	<u>SARNIA</u>	<u>SUDBURY</u>	<u>SAULT STE. MARIE</u>
AFTERNOON	6	14	1	4
EVENING	11	19	10	12
MEDIA	1 TV 3 RADIO 1 NEWSPAPER	- 4 RADIO 1 NEWSPAPER	1 TV 1 RADIO	1 TV (2 STATIONS)
	<u>OTTAWA</u>	<u>KINGSTON</u>	<u>CORNWALL</u>	<u>MISSISSAUGA</u>
AFTERNOON	10	8	9	5
EVENING	28	8	12	29
MEDIA	- 1 NEWSPAPER	1 TV 1 RADIO	- 1 RADIO 2 NEWSPAPERS	- 1 NEWSPAPER
	<u>THUNDER BAY</u>	<u>FORT FRANCES</u>	<u>WELLAND</u>	<u>HAMILTON</u>
AFTERNOON	6	2	8	6
EVENING	8	14	18	19
	1 TV 1 RADIO	1 NEWSPAPER	1 RADIO	1 NEWSPAPER
	<u>NORTH YORK</u>	<u>PETERBOROUGH (2)</u>	<u>KITCHENER</u>	<u>TORONTO (2)</u>
AFTERNOON	7	0	4	19
EVENING	16	0	17	33
	1 TV			1 NEWSPAPER 1 TV

APPENDIX I

Federal Regulatory Plan 1988
pp. 243 and 245–246
(example of format)

DEPARTMENT OF JUSTICE CANADA

APPROVED BREATH ANALYSIS INSTRUMENTS ORDER, APPROVED SCREENING DEVICES ORDER, APPROVED BLOOD SAMPLE CONTAINER ORDER596-JUS
FAMILY ORDERS AND AGREEMENTS GARNISHMENT REGULATIONS597-JUS
COMMERCIAL ARBITRATION REGULATIONS598-JUS
ACCESS TO YOUNG OFFENDERS RECORDS: ORDERS IN COUNCIL599-JUS

Roles and Responsibilities

The Department of Justice was created by an Act of Parliament in 1868. In 1962, the report of the Royal Commission on Government Organization recommended that the legal services of the government be provided by the Department of Justice, with five exceptions: the Judge Advocate General; the Legal Division of the Department of External Affairs; the Legal Division of Taxation in the Department of National Revenue; the Pensions Advocates in the Department of Veterans Affairs; and, the Legal Officers in the RCMP. That recommended integration was completed by 1970.

The Department of Justice performs two distinct functions on behalf of the government: the Attorney General function and the Minister of Justice function. The roles and responsibilities of the Department of Justice are based on the Department of Justice Act which provides for three broad areas of endeavour. First, the department is empowered to provide a full range of legal services to the Government of Canada. These services include the provision of legal advice, the preparation of legal documents, the drafting of legislation and the regulation or conduct of litigation. Second, the department is charged with ensuring that the administration of public affairs is carried out in accordance with the law. Third, the department has the lead responsibility in the planning, development and implementation of government policies in areas related to the administration of justice and such other areas as are assigned by the Governor in Council.

The major statutes, in addition to the Department of Justice Act, that provide direction to the work of the Department of Justice are the Canadian Bill of Rights, the Statutory Instruments Act and the Statute Revision Act. The Canadian Bill of Rights requires that bills introduced by ministers in the House of Commons, and regulations transmitted to the Clerk of the Privy Council for registration, be examined to ascertain that the provisions thereof are consistent with the purposes and provisions of that Act. By a 1985 amendment to the Department of Justice Act, the minister is given the responsibility for examining such regulations and bills to ascertain that their provisions are consistent with the purposes and provisions of the Canadian Charter of Rights and Freedom. In both cases he is required to report any inconsistency to the House of Commons at the first convenient opportunity. The Statutory Instruments Act requires the examination of regulations according to criteria set out in that Act. The Statute Revision Act provides for the periodic revision and consolidation of the public general statutes of Canada and of the regulations of Canada.

Legislative Mandate

- Access to Information Act
- Annulment of Marriages (Ontario) Act
- Anti-Inflation Act
- Bills of Lading Act
- Canada Evidence Act
- Canada Prize Act

- Canada - United Kingdom Civil and Commercial Judgments Convention Act
- Canadian Bills of Rights
- Canadian Human Rights Act
- Commercial Arbitration Act
- Criminal Code
- Crown Liability Act
- Department of Justice Act
- Divorce Act
- Escheats Act
- Extradition Act
- Family Orders and Agreements Enforcement Assistance Act
- Federal Court Act
- Food and Drugs Act
- Foreign Enlistment Act
- Foreign Extraterritorial Measures Act
- Fugitive Offenders Act
- Garnishment, Attachment and Pension Diversion Act
- Identification of Criminals Act
- Interpretation Act
- Judges Act
- Law Reform Commission Act
- Lord's Day Act
- Marriage Act
- Narcotic Control Act
- Official Secrets Act
- Permanent Court of International Justice Act
- Postal Services Interruption Relief Act
- Privacy Act
- State Immunity Act
- Statute Revision Act
- Statutory Instruments Act
- Supreme Court Act
- Tax Court of Canada Act
- Territorial Supreme Courts Act
- Tobacco Restraint Act
- United Nation Foreign Arbitral Awards Convention Act
- War Measures Act
- Young Offenders Act

596-JUS

APPROVED BREATH ANALYSIS INSTRUMENTS ORDER, APPROVED SCREENING DEVICES ORDER, APPROVED BLOOD SAMPLE CONTAINER ORDER

These orders are required in order to approve various devices and instruments of a kind that are designed either to ascertain the presence of alcohol in the blood of a person or to ascertain the concentration of alcohol in the blood of that person, and in order to approve various containers of a kind that are designed to receive a sample of the blood of a person for analysis. These devices, instruments and containers must be approved by the Attorney General of Canada before they may be used in the manner described in the Criminal Code for the purposes of detecting impairment.

Anticipated Impact: Approval of new devices, instruments or containers will permit their use by police forces in or-

der to investigate suspected cases of impaired driving, boating or flying. Approval of new devices will increase the purchase options available to police authorities for the purchase and use of new equipment.

Statutory Authority: Criminal Code, R.S.C. 1970, c. C-34, s. 238, as amended by S.C. 1985, c. 19.

Expected Date of Publication: Unknown. The process of approvals is an ongoing process that is dependent on the existence of applications by manufacturers who are seeking approval and upon a subsequent evaluation of the application by the federal government.

Contact: Donald K. Piragoff, Legal Counsel, Criminal and Family Law Policy Directorate, Department of Justice, 239 Wellington Street, Ottawa, K1A 0H8. Tel.: (613) 957-4735.

597-JUS

FAMILY ORDERS AND AGREEMENTS GARNISHMENT REGULATIONS

To carry out provisions of the Act Part II (to be proclaimed in force) to garnish moneys of defaulting spouses. The regulations designate garnishable moneys, set out application and notice forms, and provide miscellaneous administrative details. The department currently has an implementation team designing the services required by the Act.

Anticipated Impact: Necessary to provide the services under the Act. Will increase family incomes where spouses have entered into formal separation agreements or court orders for support have been made.

Statutory Authority: Family Orders and Agreements Enforcement Assistance Act, S.C. 1986, c.5.

Expected Date of Publication: Spring, 1988.

Contact: Glenn Rivard, Senior Counsel, Criminal and Family Law Policy Directorate, Department of Justice, 239 Wellington Street, Ottawa, K1A 0H8. Tel.: (613) 957-4717.

598-JUS

COMMERCIAL ARBITRATION REGULATIONS

The minister proposes to recommend regulations which will prescribe the terms and conditions on which departments and Crown corporations may enter into an arbitration agreement.

Anticipated Impact: The anticipated impact on the public is minimal as arbitration agreements are normally contained as part of a contract which by its very nature is a consensual document. It is expected that the scope of the regulations will be sufficiently broad so as not to im-

pose an adverse impact on existing commercial practice. Rather it is intended that their passage will serve as a positive influence on departments and Crown corporations in resorting to arbitration as opposed to litigation.

Statutory Authority: Commercial Arbitration Act, S.C. 1986, c.22, s.8.

Expected Date of Publication: Part I regulations by December, 1988.

Contact: Jacques Gauthier, A/General Counsel, Commercial Law Section, Department of Justice, 239 Wellington Street, Ottawa, K1A 0H8. Tel.: (613) 957-4640.

599-JUS

ACCESS TO YOUNG OFFENDERS RECORDS: ORDERS IN COUNCIL

The proposed regulations will protect young people from unnecessary public labelling as criminals while ensuring that broad social protection objectives are met. The Young Offenders Act limits access to the records of young offenders where conviction has been obtained to persons/agencies identified in the Act, to persons authorized in individual cases by a youth court, or through orders in council. In the latter case, the authorization of persons/agencies through Orders in Council permits each provincial government and the federal government to meet particular and changing needs without recourse to lengthy statutory lists or to the administratively-cumbersome process of individual applications to youth courts.

Anticipated Impact: The process of promulgating orders in council will ensure that those federal departments/agencies that have legitimate need of access to youth court records are able to obtain such information without relying upon time consuming and inconsistent applications to youth courts. In addition to the administrative benefits that will result, the Orders in Council will clarify, for all concerned, the circumstances in which young offenders records may be used against individual offenders.

Statutory Authority: Young Offenders Act, S.C. 1986, c. 32, s. 34 (44.1(1)(h)).

Expected Date of Publication: Fall, 1988.

Contact: James E. Coffin, Director, Policy Development, Policy, Program and Research Branch, Department of Justice, 239 Wellington Street, Ottawa, K1A 0H8. Tel.: (613) 957-1524.

APPENDIX J

The Canada Gazette Part I
March 12, 1988, pp. 957-960
(example of format)

PROPOSED REGULATIONS

RÈGLEMENTS PROJETÉS

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Race Track Supervision Regulations— Amendment

Statutory Authority

Criminal Code, S.C. 1985, c. 44, s. 188

Sponsoring Department

Department of Agriculture

REGULATORY IMPACT ANALYSIS STATEMENT

Description

From time to time as circumstances require, substances are added to, or deleted from, Part I of the Schedule of drugs in the Race Track Supervision Regulations.

This amendment adds one drug to this Schedule. The drug, acebutolol, is a new drug as defined in the Food and Drug Regulations, and is therefore prohibited, under Part II of the Schedule, for 240 days, calculated from the day the Minister of National Health and Welfare issued a notice of compliance for it. This temporary prohibition period expired in mid-July 1987.

Under the Race Track Supervision Regulations, all new drugs are banned temporarily. This preliminary period gives the Drug Advisory Committee an opportunity to examine a particular drug and its possible effect on the outcome of a race if used on race horses. In this case, it was determined that acebutolol has an action similar to a number of other drugs which, practising veterinarians agree, are capable of influencing a horse's performance and therefore have been permanently prohibited. The addition of acebutolol to the drug Schedule is consistent with the policy that to permit a horse to race on drugs, which have the potential of affecting their performance, is not in the best interests of the betting public.

Alternatives Considered

If this drug is not added to the Schedule, the current level of protection for pari-mutuel bettors against race horses competing on medication would not be maintained.

The list must reflect immediately the scientific advances with respect to the effects of drugs on race horses, in order to be effective.

Consistency with Regulatory Policy and Citizens' Code

This amendment is consistent with the Regulatory Policy and the Citizens' Code. The public's interests are protected because a drug capable of affecting the outcome of a race will

Règlement sur la surveillance des hippodromes—Modification

Fondement législatif

Code criminel, S.C. 1985, ch. 44, art. 188

Ministère responsable

Ministère de l'Agriculture

RÉSUMÉ DE L'ÉTUDE D'IMPACT DE LA RÉGLEMENTATION

Description

De temps à autre, et selon les circonstances, des substances sont ajoutées à la partie I de l'annexe des drogues du Règlement sur la surveillance des hippodromes, ou en sont radiées.

Cette modification vise à ajouter une drogue à l'annexe. Cette drogue, l'acébutolol, est une nouvelle drogue au sens du Règlement sur les aliments et drogues, et elle est donc défendue, tel que mentionné à la partie II de l'annexe, pour une période de 240 jours de la date de l'avis de conformité délivrée par le ministre de la Santé nationale et du Bien-être social. Cette période de prohibition temporaire fut terminée à la mi-juillet 1987.

Aux termes du Règlement sur la surveillance des hippodromes, toutes les nouvelles drogues sont défendues temporairement. Cette période préliminaire donne au Comité consultatif des drogues l'occasion d'examiner une drogue particulière et son effet possible sur les résultats d'une course, si celle-ci est administrée à des chevaux de course. Dans ce cas, il a été décidé, et les vétérinaires pratiquants y consentent, que l'acébutolol a une action semblable à beaucoup d'autres drogues qui peuvent influencer la performance d'un cheval et ont donc été défendues de façon permanente. L'ajout de l'acébutolol à l'annexe est conforme à la politique qui spécifie que permettre à un cheval de disputer une course sous l'effet de drogues pouvant influencer sa performance n'est pas dans le meilleur intérêt du public parieur.

Autres mesures envisagées

Si cette drogue n'est pas portée à l'annexe, le niveau actuel de protection pour les parieurs de pari mutuel contre l'admission aux courses de chevaux auxquels on a administré une drogue ne sera pas maintenu.

Pour qu'elle soit efficace, l'annexe doit tenir compte immédiatement des dernières découvertes scientifiques liées aux effets des drogues sur les chevaux de course.

Conformité à la politique de réglementation et au Code d'équité

La modification est conforme à la politique de réglementation et au Code d'équité. L'intérêt du public est protégé du fait que l'emploi d'une drogue pouvant influencer sur les résultats

be prohibited. Early notice was provided through the 1987 Federal Regulatory Plan, proposal number 32 AGR-B87.

Anticipated Impact

The provincial racing commissions support the Department's maintenance of the Schedule of drugs and the Drug Control Service, and support them with their provincial rules of racing.

Information on additions to the Schedule is provided to all industry sectors, so they know which substances to avoid when treating horses before racing. There is a minor impact on horsemen, who are responsible for ensuring that these drugs are not used.

The current level of protection of the pari-mutuel betting public will be maintained.

Consultation

The Department consults with the Drug Advisory Committee (chemists and veterinarians) before any substance is added to the Schedule.

Compliance Mechanism

There would be no change in current compliance activities.

For Further Information Contact

J. Easton, Associate Director, Policy, Planning and Research, Race Track Division, 613-998-4922.

d'une course sera défendu. Un préavis a été donné par la proposition numéro 32 AGR-B87 du Plan de la réglementation fédérale de 1987.

Répercussions prévisibles

Les commissions provinciales des courses appuient l'annexe des drogues et le service de contrôle des drogues du Ministère par le biais de leurs propres règlements sur les courses.

Les propriétaires de chevaux et les vétérinaires seront mis au courant des substances à éviter lorsqu'ils traitent les chevaux avant les courses. Cette modification aurait un impact secondaire sur les entraîneurs parce qu'ils sont chargés de s'assurer que ces drogues ne sont pas utilisées.

Le niveau actuel de protection pour les parieurs de pari mutuel sera maintenu.

Consultations

Le Ministère consulte le Comité consultatif des drogues (chimistes et vétérinaires) avant d'ajouter une substance quelconque à l'annexe.

Mécanismes d'observation à prévoir

Aucun changement ne sera apporté aux activités de contrôle en vigueur.

Pour de plus amples renseignements, communiquer avec

J. Easton, Directeur adjoint, Planification, politiques et recherches, Division des hippodromes, 613-998-4922.

PROPOSED REGULATORY TEXT

Notice is hereby given that the Minister of Agriculture proposes, pursuant to section 188 of the Criminal Code, to amend the Race Track Supervision Regulations, C.R.C., c. 441 in accordance with the schedule hereto.

Interested persons may, within 30 days after the date of publication of this notice, make representations concerning the proposed amendment. All such representations should be addressed to the Director, Race Track Division, P.O. Box 5904, Station "F", Ottawa, Ontario K2C 3X7 and cite the date of publication of this notice. The representations should also stipulate the parts thereof that should not be disclosed pursuant to the Access to Information Act, and should include, pursuant to sections 19 and 20 of the said Act, the reason why those parts should not be disclosed and the period during which these parts should remain undisclosed.

J. EASTON
Associate Director

PROJET DE RÉGLEMENTATION

Il est par les présentes donné avis que le ministre de l'Agriculture propose, en vertu de l'article 188 du *Code criminel*, de modifier, conformément à l'annexe qui suit, le Règlement sur la surveillance des hippodromes, C.R.C., ch. 441.

Les personnes intéressées peuvent présenter leurs observations au sujet du projet de règlement dans les 30 jours suivant la publication du présent avis, au Directeur, Division des hippodromes, Case postale 5904, Succursale postale «F», Ottawa (Ontario) K2C 3X7. Elles sont priées d'y citer la date de publication du présent avis. Elles doivent également y indiquer lesquelles des observations sont soustraites à la divulgation en vertu de la *Loi sur l'accès à l'information*, notamment en vertu des articles 19 et 20, en précisant les motifs et la période de non-divulgence.

Le directeur adjoint
J. EASTON

SCHEDULE

1. Part I of the schedule¹ to the *Race Track Supervision Regulations* is amended by adding thereto, in alphabetical order within the Part, the following drug:

“Acebutolol”

[11-1-o]

ANNEXE

1. La partie I de l'annexe¹ du *Règlement sur la surveillance des hippodromes* est modifiée par insertion, suivant l'ordre alphabétique, de ce qui suit:

«Acébutolol»

[11-1-o]

¹ SOR/86-839, 1986 *Canada Gazette* Part II, p. 3496.

¹ DORS/86-839, *Gazette du Canada* Partie II, 1986, p. 3496.

APPENDIX K

The Canada Gazette Part II
March 2, 1988, pp. 1248–1250
(example of format)

Registration
SOR/88-139 18 February, 1988

Enregistrement
DORS/88-139 18 février 1988

EXCISE ACT

LOI SUR L'ACCISE

Tobacco Departmental Regulations, amendment

Règlement ministériel sur le tabac—Modification

The Minister of National Revenue, pursuant to sections 31*, 125.1**, 197, 207, 210***, 211, 216, 219, 222 and 224 of the Excise Act, is pleased hereby to amend the Tobacco Departmental Regulations, C.R.C., c. 581, in accordance with the schedule hereto.

En vertu des articles 31*, 125.1**, 197, 207, 210***, 211, 216, 219, 222 et 224 de la Loi sur l'accise, le ministre du Revenu national modifie, conformément à l'annexe ci-après, le Règlement ministériel sur le tabac, C.R.C., ch. 581.

Ottawa, February 18, 1988

Ottawa, le 18 février 1988

ELMER MacKAY
Minister of National Revenue

Le ministre du Revenu national
ELMER MacKAY

SCHEDULE

ANNEXE

1. Section 3 of the *Tobacco Departmental Regulations* is revoked and the following substituted therefor:

1. L'article 3 du *Règlement ministériel sur le tabac* est abrogé et remplacé par ce qui suit :

"3. The following operations shall be subject to the supervision of an officer:

«3. Les opérations suivantes doivent se faire sous la surveillance d'un préposé :

- (a) bringing raw material into or removing raw material from a manufactory;
- (b) manufacturing tobacco products;
- (c) transferring tobacco within a manufactory;
- (d) warehousing, ex-warehousing or re-working tobacco products;
- (e) destroying tobacco or tobacco products in respect of which an application is to be made by a manufacturer for a refund of excise duty;
- (f) determining the quantity of tobacco products in respect of which an application is to be made by a manufacturer for refund of excise duty;
- (g) receiving stamped tobacco products; and
- (h) disposing of all stems, sweepings or other waste or refuse tobacco that are found in a tobacco or cigar manufactory and are not intended to be used."

- a) l'entrée des matières premières à la manufacture ou leur sortie;
- b) la fabrication des produits du tabac;
- c) le transfert du tabac à l'intérieur de la manufacture;
- d) l'entreposage, la sortie d'entrepôt ou le nouveau façonnage des produits du tabac;
- e) la destruction du tabac ou des produits du tabac pour lesquels le fabricant compte présenter une demande de remboursement des droits d'accise;
- f) le calcul de la quantité de produits du tabac pour laquelle le fabricant compte présenter une demande de remboursement des droits d'accise;
- g) la réception des produits du tabac estampillés;
- h) l'élimination des tiges, côtes, balayures ou autres déchets ou rebuts de tabac trouvés dans une manufacture de tabac ou de cigares, et qui ne sont pas destinés à être utilisés.»

2. Sections 8 and 9 of the said Regulations are revoked and the following substituted therefor:

2. Les articles 8 et 9 du même règlement sont abrogés et remplacés par ce qui suit :

"Refunds

«Remboursement

9. A refund of the excise duty paid on tobacco products that have been re-worked or destroyed by a manufacturer shall be granted to that manufacturer on condition that:

9. Il est accordé au fabricant un remboursement des droits d'accise payés sur les produits du tabac qu'il façonne de nouveau ou détruit lorsque les conditions suivantes sont réunies :

- (a) the quantity of the tobacco products re-worked or destroyed is determined;

- a) la quantité de produits du tabac façonnée de nouveau ou détruite est déterminée;

* S.C. 1980-81-82-83, c. 102, s. 3

** S.C. 1985, c. 3, s. 41

*** S.C. 1986, c. 9, s. 62

* S.C. 1980-81-82-83, ch. 102, art. 3

** S.C. 1985, ch. 3, art. 41

*** S.C. 1986, ch. 9, art. 62

(b) the manufacturer establishes that excise duty has been paid on the quantity of tobacco products re-worked or destroyed; and

(c) the quantity of tobacco contained in the tobacco products that have been re-worked is added to materials in process."

3. Paragraph 14(f) of the French version of the said Regulations is revoked and replaced by the following:

"f) les quantités de produits du tabac reçues, droits acquittés ou en entrepôt, qui ont été façonnées de nouveau;"

4. Paragraph 19(a) of the French version of the said Regulations is revoked and replaced by the following:

"a) les quantités de produits du tabac déclarées pour l'entreposage, expédiées en entrepôt, restées en entrepôt, manufacturées et pour lesquelles des droits ont été acquittés, ainsi que les quantités de produits du tabac pour lesquelles des droits ont été acquittés et qui ont été façonnées de nouveau;"

REGULATORY IMPACT ANALYSIS STATEMENT

(This statement is not part of the Regulations.)

Description

This amendment regulates the destruction of manufactured tobacco and cigars and the refunding to the manufacturer of the duty paid thereon. Previously, no duty could be refunded on tobacco deliberately destroyed. The amendment also reorganizes the Regulations to clarify existing provisions.

Alternatives Considered

None. Section 210 of the *Excise Act*, as amended by Bill C-80, specifies that the refunding of duty on tobacco products destroyed shall be done as specified by departmental regulations. Also, sections 3, 8 and 9 of the existing Regulations are not clear and needed to be reorganized.

Consistency with Regulatory Policy and Citizens' Code

This amendment is intended to assist manufacturers by allowing them to recover duty on goods which they will not be able to sell. It will also make the Regulations easier to understand. Thus it is consistent with the Code.

Anticipated Impact

Manufacturers of tobacco products will now be able to recover duty on duty paid tobacco products which have been destroyed as being unfit for consumption. The amount of money involved cannot be estimated as the destruction of duty paid tobacco is not a routine occurrence but something which occurs as a result of unusual circumstances. Also, the Regulations will be easier to understand, as a result of their being reorganized.

b) le fabricant démontre que les droits d'accise ont été payés sur la quantité de produits du tabac façonnée du nouveau ou détruite;

c) la quantité de tabac que contenaient les produits du tabac façonnés de nouveau est ajoutée aux matières en cours de fabrication.»

3. L'alinéa 14f) de la version française du même règlement est abrogé et remplacé par ce qui suit :

«f) les quantités de produits du tabac reçues, droits acquittés ou en entrepôt, qui ont été façonnées de nouveau;»

4. L'alinéa 19a) de la version française du même règlement est abrogé et remplacé par ce qui suit :

«a) les quantités de produits du tabac déclarées pour l'entreposage, expédiées en entrepôt, restées en entrepôt, manufacturées et pour lesquelles des droits ont été acquittés, ainsi que les quantités de produits du tabac pour lesquelles des droits ont été acquittés et qui ont été façonnées de nouveau;»

RÉSUMÉ DE L'ÉTUDE D'IMPACT DE LA RÉGLEMENTATION

(Ce résumé ne fait pas partie du règlement.)

Description

La modification règle la destruction du tabac manufacturé et des cigares ainsi que le remboursement du droit payé sur ces marchandises du tabac au fabricant. Auparavant, il n'y avait aucun remboursement du droit sur le tabac délibérément détruit. De plus, elle réorganise le règlement afin de clarifier les présentes dispositions.

Autres mesures envisagées

Aucune. L'article 210 de la *Loi sur l'accise*, tel que modifié par le Projet de loi C-80, prévoit le remboursement du droit sur les marchandises détruites selon les exigences du règlement ministériel. De plus, les articles 3, 8 et 9 du présent règlement sont maladroitement exprimés et ils doivent être réorganisés.

Conformité à la Politique de réglementation et au Code d'équité

La modification vise à aider les fabricants en leur permettant de récupérer les droits payables sur les marchandises qu'ils ne pourront pas vendre. Elle vise aussi à clarifier le règlement. De cette façon, elle est conforme aux principes du Code.

Répercussions prévisibles

Les fabricants pourront récupérer le droit sur les marchandises du tabac sur lesquelles les droits ont été acquittés dans le cas où les marchandises impropres à la consommation ont été détruites. Le montant d'argent impliqué ne peut pas être estimé étant donné que la destruction du tabac sur lequel les droits ont été acquittés n'est pas une procédure habituelle; elle résulte à cause des circonstances rares. De plus, le règlement sera plus facile à comprendre par suite de sa réorganisation.

Consultation

Excise officers consulted the Canadian Tobacco Manufacturer's Council before drafting this amendment.

Compliance Mechanism

To qualify for a refund, a manufacturer must determine the quantity of tobacco products re-worked or destroyed and establish that duty has been paid. Also, tobacco for re-work must be added to materials in process.

For further information, contact:

Don Dawson
Revenue Canada
Customs and Excise
Connaught Building
Mackenzie Avenue
Ottawa, Ontario
K1A 0L5
(613) 954-7926

Consultations

Les fonctionnaires de l'Accise ont consulté l'Association des fabricants de tabac avant de préparer la modification.

Mécanismes d'observance à prévoir

Afin de se qualifier pour un remboursement, un titulaire de licence doit déterminer la quantité des produits du tabac qui ont été refaçonés ou détruits et établir que le droit a été payé sur ces produits. De plus, le tabac pour le refaçonage doit être ajouté aux matières en cours de fabrication.

Pour de plus amples informations contacter :

Don Dawson
Revenu Canada
Douanes et Accise
Édifice Connaught
Avenue Mackenzie
Ottawa (Ontario)
K1A 0L5
(613) 954-7926

APPENDIX L

Quebec Regulations Act, S.Q. 1986, c. 22

Gazette officielle du Québec, Part 2, November 25, 1987, p. 4001 (example of format)



CHAPTER 22

Regulations Act

[Assented to 19 June 1986]

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

DIVISION I

INTERPRETATION AND APPLICATION

Interpreta-
tion

1. In this Act,

"proposed
regulation"

"**proposed regulation**" means the text which an authority proposes to make as a regulation, where no approval by any other authority is required by law, or, where such approval is so required, the text which must be submitted for approval;

"regulation"

"**regulation**" means a normative instrument of a general and impersonal nature, made under an Act and having force of law when it is in effect.

Applicability

2. This Act applies to every proposed regulation or proposed by-law and to every regulation or by-law that may be made or approved by the Government, the Conseil du trésor, a minister or an agency the majority of whose members are appointed by the Government or a minister, whose staff must, by law, be appointed or remunerated in accordance with the Public Service Act (R.S.Q., chapter F-3.1.1), or at least one-half of whose capital stock forms part of the public domain.

Restriction

3. This Act does not apply to

(1) proposed regulations or by-laws or regulations or by-laws regulating internal management, the exercise of borrowing powers or

the management of human resources, including all conditions of employment of employees appointed or remunerated in accordance with the Public Service Act and those of the staff of the establishments or agencies referred to in paragraphs 3 and 4 and in section 2;

(2) proposed by-laws or the by-laws of municipalities or of an agency which may make by-laws in the place of the municipalities, or of agencies of such municipalities, or of supramunicipal bodies within the meaning of the Act respecting retirement plans for the mayors and councillors of municipalities (R.S.Q., chapter R-16), or of the Kativik Regional Government;

(3) proposed by-laws or the by-laws of school boards, or of general and vocational colleges, or of the agencies established pursuant to the University of Québec Act (R.S.Q., chapter U-1);

(4) proposed regulations or by-laws or the regulations or by-laws of establishments within the meaning of the Act respecting health services and social services (R.S.Q., chapter S-5), or of regional health and social service councils established under that Act;

(5) proposed rules of practice or the rules of practice of the courts of justice;

(6) such proposed regulations or regulations as the Government may determine by order.

DIVISION II

EXAMINATION OF PROPOSED REGULATIONS

Examination
by Minister

4. Every proposed regulation shall be transmitted for examination, by the authority proposing to make it or, in the case of a text to be submitted for approval, by the authority that must approve it, to the Minister of Justice or a person designated by him.

Object of
examination

5. The examination shall be made to ensure that the proposed regulation

- (1) is authorized by the Act under which it is proposed;
- (2) is in harmony with the existing Acts and regulations;
- (3) is juridically appropriate to the object pursued;
- (4) is coherent;
- (5) meets the standards of draftsmanship.

Opinion **6.** Following the examination of the proposed regulation, a substantiated opinion shall be given to the authority that transmitted it.

Amendment **7.** If the proposed regulation on which an opinion has been given is subsequently amended otherwise than as recommended in the opinion, it shall be returned for examination.

DIVISION III

PUBLICATION OF PROPOSED REGULATIONS

Publication **8.** Every proposed regulation shall be published in the *Gazette officielle du Québec*.

Exception **9.** Section 8 does not require the publication in the *Gazette officielle du Québec* of any text referred to in a proposed regulation.

Notice **10.** Every proposed regulation published in the *Gazette officielle du Québec* shall be accompanied with a notice stating, in particular, the period within which no proposed regulation may be made or submitted for approval but within which interested persons may transmit their comments to a person designated in the notice.

Approval **11.** No proposed regulation may be made or submitted for approval before the expiry of 45 days from its publication in the *Gazette officielle du Québec*, or before the expiry of the period indicated in the notice accompanying it or in the Act under which the proposed regulation may be made or approved, where the notice or the Act provides for a longer period.

Exception **12.** A proposed regulation may be made or approved at the expiry of a shorter period than the period applicable to it, or without having been published, if the authority making or approving it is of the opinion that a reason provided for in the Act under which the proposed regulation may be made or approved, or one of the following circumstances, warrants it:

(1) the urgency of the situation requires it;

(2) the proposed regulation is designed to establish, amend or repeal norms of a fiscal nature.

Publication **13.** The reason justifying a shorter publication period shall be published with the proposed regulation, and the reason justifying the absence of such publication shall be published with the regulation.

Amendment **14.** A proposed regulation may be amended after its publication without being published a second time.

DIVISION IV

PUBLICATION AND COMING INTO FORCE OF REGULATIONS

- Publication **15.** Every regulation shall be published in the *Gazette officielle du Québec*.
- Exception **16.** Section 15 does not require the publication in the *Gazette officielle du Québec* of any text referred to in a regulation.
- Restriction No person may be convicted of an offence under a text that has not been published in the *Gazette officielle du Québec* and that is referred to by a regulation unless it is proved that the text has been published otherwise and that the persons to whom the text may be applicable were in a position to acquaint themselves with it before the offence was committed.
- Coming into force **17.** A regulation comes into force fifteen days after the date of its publication in the *Gazette officielle du Québec* or on any later date indicated in the regulation or in the Act under which it is made or approved.
- Coming into force **18.** A regulation may come into force on the date of its publication in the *Gazette officielle du Québec* or between that date and the date applicable under section 17 where the authority that has made or approved it is of the opinion that a reason provided for in the Act under which the regulation may be made or approved, or one of the following circumstances, warrants it:
- (1) the urgency of the situation requires it;
 - (2) the regulation establishes, amends or repeals norms of a fiscal nature.
- Justification The reason justifying such coming into force shall be published with the regulation.
- Restriction **19.** Where a regulation comes into force in accordance with section 18, no person may be convicted of an offence under the regulation, committed between the date of its coming into force and the fifteenth day after the date of its publication in the *Gazette officielle du Québec*, unless it is proved that the persons to whom the regulation may be applicable were in a position to acquaint themselves with it before the offence was committed.

Knowledge
of published
regulations

20. Every person is bound to acquaint himself with the regulations published in the *Gazette officielle du Québec*, and those regulations do not need to be specially pleaded.

DIVISION V

DISALLOWANCE OF REGULATIONS

Disallowance

21. The National Assembly may, in accordance with its standing orders, vote the disallowance of any regulations or any prescriptions of a regulation.

Publication

22. The Secretary General of the National Assembly shall immediately cause to be published in the *Gazette officielle du Québec* notice that a regulation or, as the case may be, any prescription of a regulation has been disallowed, with notice of the date of the disallowance.

Knowledge
of notice

Every person is bound to acquaint himself with the notice so published, and the notice does not need to be specially pleaded.

Date of
effect

23. The disallowance of a regulation or of any prescription of a regulation takes effect on the date of passage of the motion of disallowance or on any later date indicated in the motion.

Effect

24. The disallowance of a regulation or of any prescription of a regulation has the same effect as the repeal of a regulation.

DIVISION VI

FINAL PROVISIONS

Obligations

25. Failure to carry out an obligation prescribed under this Act does not invalidate a regulation unless the obligation is contemplated in one or another of sections 8, 10, 13 and 15 or in the second paragraph of section 18.

Precedence

26. Sections 1 to 25 take precedence over any inconsistent provision of any general law or special Act assented to before 1 September 1986.

Precedence

Any provision of an Act assented to before 1 September 1986 takes precedence over section 8 if it expressly provides that a proposed regulation may be made or approved without having been published in the *Gazette officielle du Québec*.

- Effect **27.** This Act does not prevent a regulation from taking effect before the date of its publication in the *Gazette officielle du Québec* where the Act under which it is made or approved expressly provides therefor.
- c. A-2.1, s. 131, am. **28.** Section 131 of the Act respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q., chapter A-2.1) is amended by replacing the first line of the third paragraph by the following: "The regulation comes into force fifteen days after the date of its publication in".
- c. A-2.1, s. 157, am. **29.** Section 157 of the said Act is amended by replacing the first line by the following:

"157. A regulation made under section 155 comes into force fifteen days after the".
- c. I-16, s. 13, am. **30.** Section 13 of the Interpretation Act (R.S.Q., chapter I-16) is amended by adding, after the first paragraph, the following paragraph:

"Regulations or other instruments made under the replaced or consolidated provision remain in force to the extent that they are consistent with the new provisions; the instruments remaining in force are deemed to have been made under the new provisions."
- Regulations in force
- Applicability **31.** Sections 1 to 19, 25, 28 and 29 do not apply to regulations made before 1 September 1986.
- Applicability The sections mentioned in the first paragraph also do not apply to proposed regulations transmitted on or before 1 September 1986 for publication in the *Gazette officielle du Québec*.
- Administration **32.** The Minister of Justice is responsible for the administration of this Act, with the exception of Division V.
- Coming into force **33.** This Act comes into force on 1 September 1986.

Draft Regulations

Draft Regulation

Professional Code
(R.S.Q., c. C-26)

Chiropractors

- Professional liability insurance
- Amendments

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the Regulation respecting professional liability insurance of the Ordre des chiropraticiens du Québec (Amendment), made by the Ordre des chiropraticiens du Québec, the text of which appears below, may be submitted for approval by the Government upon the expiry of 45 days following this publication.

Any person having comments to make is asked to transmit them, before the expiry of the 45-day period, to the Chairman of the Office des professions du Québec, 930, chemin Sainte-Foy, 7^e étage, Québec (Québec), G1S 2L4. These comments will be forwarded by the Office to the Minister responsible for the administration of legislation concerning the professions; they may also be forwarded to the professional corporation that made the Regulation as well as to the persons, departments and agencies concerned.

LOUIS ROY,
*Vice-Chairman of the Office des
professions du Québec*

Regulation respecting professional liability insurance of the Ordre des chiropraticiens du Québec (Amendment)

Professional Code
(R.S.Q., c. C-26, s. 94, par. 1)

1. The Regulation respecting professional liability insurance of the Ordre des chiropraticiens du Québec, made by Order in Council 551-84 dated 7 March 1984, is amended by substituting, in the second line of section 6, the amount 500 000 \$ for the amount 1 000 000 \$.

2. The Regulation is amended by inserting the following after section 10:

"10.1 A chiropractor is deemed to have complied with the provisions of this Regulation where he provides to the secretary, within the period of time indicated in section 10, proof that he benefits, by his participation in the Canadian Chiropractic Protective Association, from liability coverage in compliance with this Regulation."

3. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

3897

Draft Regulation

An Act respecting health services and social services
(R.S.Q., c. S-5)

Organization and Management of Establishments — Amendments

Notice is hereby given, in accordance with the third paragraph of section 173 of the Act respecting health services and social services (R.S.Q., c. S-5), that the Organization and Management of Establishments Regulation (Amendment), the text of which appears below, may be approved by the Government at the expiry of 60 days following this publication.

Any person having comments to make is asked to send them in writing, before the expiry of the 60-day period, to the Minister of Health and Social Services, Mrs. Thérèse Lavoie-Roux, 1075, chemin Sainte-Foy, 15^e étage, Québec (Québec), G1S 2M1.

THÉRÈSE LAVOIE-ROUX,
Minister of Health and Social Services

APPENDIX M

United States Administrative Procedure Act
5 U.S.C., c. 5, s. 553 (enacted 1946)

§ 553. Rule making

(a) This section applies, accordingly to the provisions thereof, except to the extent that there is involved—

(1) a military or foreign affairs function of the United States; or

(2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include—

(1) a statement of the time, place, and nature of public rule making proceedings;

(2) reference to the legal authority under which the rule is proposed; and

(3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply—

(A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—

(1) a substantive rule which grants or recognizes an exemption or relieves a restriction;

(2) interpretative rules and statements of policy; or

(3) as otherwise provided by the agency for good cause found and published with the rule.

(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

APPENDIX N

Standing Orders of the House of Commons Chapter V

CHAPTER V

REVIEW OF DELEGATED LEGISLATION BY THE HOUSE

44. In addition to the powers granted so far as this House is concerned to the Standing Joint Committee for Regulatory Scrutiny pursuant to Standing Order 96(4)(b), the said Committee shall be empowered to make a report to the House containing only a resolution which, if the report is concurred in, would be an Order of this House to the Ministry to rescind one specified regulation or other statutory instrument, which the Ministry has the authority to rescind.

45. Not more than one report pursuant to Standing Order 44 shall be received during any sitting.

46. (1) When any report is made pursuant to Standing Order 44, the Member presenting it shall state that it contains a resolution pursuant to Standing Order 44, shall identify the statutory instrument, or portion thereof, in relation to which the said report is made, and shall indicate that the relevant text is included in the report.

(2) Immediately after the said report is received and laid upon the Table, the Clerk of the House shall cause to be placed on the Notice Paper a notice of motion for concurrence in the report, which shall stand in the name of the Member presenting the report. No other notice of motion for concurrence in the report shall be placed on the Notice Paper.

47. When a notice given pursuant to Standing Order 46(2) is transferred to the Order Paper under Motions, it shall be set down for consideration only pursuant to Standing Order 51 and shall be considered only at the request of a Minister of the Crown, provided that any other Member shall be permitted to propose the motion on behalf of the Member in whose name it stands notwithstanding the usual practices of the House.

48. Except as otherwise provided in any Standing or Special Order of the House, and unless otherwise disposed of, at not later than 6.00 o'clock p.m. on a Monday, Tuesday, Wednesday or Thursday, or 3.00 o'clock p.m. on Friday, on the fifteenth sitting day following the date on which a notice of motion made pursuant to Standing Order 46(2) appeared on the Order Paper, the same shall be deemed to have been moved and adopted by the House.

49. (1) A notice given pursuant to Standing Order 46(2) shall be taken up and considered for a period not exceeding one hour provided that:

(a) during the consideration of any such motion or motions, no Member shall speak more than once or for more than ten minutes;

(b) for the purposes of this Standing Order and notwithstanding the usual practices of the House, no consideration of the procedural acceptability of any report, for which a notice of motion for concurrence has been given pursuant to Standing Order 46(2), shall be entertained until all such notices of motions of which notice of consideration had previously been given pursuant to Standing Order 68(1), have been put to the House for its consideration. If any report is thereafter found to be irreceivable, the motion for concurrence in the report shall be deemed to have been withdrawn; and

(c) unless the motion or motions be previously disposed of, not later than the end of the said hour of consideration, the Speaker shall interrupt any proceedings then before the

House and put forthwith and successively, without further debate or amendment, every question necessary to dispose of the said motion or motions, provided that any division or divisions demanded in relation thereto shall stand deferred until not later than 6.00 o'clock p.m. in that sitting, when the bells to call in the Members shall be sounded for not more than fifteen minutes. Any remaining questions necessary to dispose of proceedings in relation to such motion or motions, on which a decision has been deferred until after the taking of such a division, shall be put forthwith and successively, without further debate or amendment.

(2) The provisions of Standing Order 13(4) shall be suspended in the case of any division demanded pursuant to paragraph (c) of section (1) of this Standing Order.

(3) The Standing Orders relating to the ordinary hour of daily adjournment shall be suspended until all questions have been decided pursuant to paragraph (c) of section (1) of this Standing Order.

50. The House shall undertake consideration of any motion or motions made pursuant to Standing Order 46(2) in the order in which they may be set down for consideration at the request of a Minister of the Crown, provided that all such motions shall be grouped together for debate.

51. When a notice or notices of motion for concurrence given pursuant to Standing Order 46(2) has or have been set down for consideration pursuant to Standing Order 47, the House shall meet at 1:00 o'clock p.m. on the Wednesday next, at which time the order of business shall be the consideration of the said notice or notices.

APPENDIX O

Saskatchewan Regulations Act
R.S.S. 1978, c. R-16, s. 17

17 Where, under the Standing Orders of the Legislative Assembly or in accordance with procedure otherwise prescribed by the Legislative Assembly, a member of the Executive Council or other authority making a regulation, or, in the case of a regulation made by order in council, the member of the Executive Council recommending it, receives from the Clerk of the Legislative Assembly a copy of a resolution of the assembly showing that the assembly disapproves the regulation or any part thereof, or requires it to be amended, the member of the Executive Council or other authority or the Lieutenant Governor in Council, as the case may require, shall revoke the regulation in whole or in part or amend it as required by the resolution.

APPENDIX P

Manitoba Regulations Act
C.C.S.M., c. R60, s. 12

12 Where, under the Rules of the Legislative Assembly, a minister of the Crown or other authority making a regulation or, in the case of an order in council, the minister recommending it, receives from the Clerk of the Legislative Assembly a copy of a resolution of the assembly showing that the assembly disapproves the regulation or any part thereof, or requires it to be amended, the minister or other authority or the Lieutenant Governor in Council, as the case may be, shall revoke the regulation in whole or in part or amend it as required in the resolution.

APPENDIX Q

Australian Acts Interpretation Act 1901
Act No. 2, 1901, as amended, ss. 48–49

PART XII—REGULATIONS

Heading
substituted by
No. 52, 1964,
s. 6

48. (1) Where an Act confers power to make regulations, then, unless the contrary intention appears, all regulations made accordingly—

Regulations
Added by
No. 10, 1937,
s. 13

(a) shall be notified in the *Gazette*;⁵

Sub-section (1)
amended by
No. 144, 1976,
s. 9

(b) shall, subject to this section, take effect from the date of notification, or, where another date is specified in the regulations, from the date specified; and

(c) shall be laid before each House of the Parliament within 15 sitting days of that House after the making of the regulations.

(2) Regulations shall not be expressed to take effect from a date before the date of notification in any case where, if the regulations so took effect—

Amended by
No. 80, 1950, s. 3

(a) the rights of a person (other than the Commonwealth or an authority of the Commonwealth) existing at the date of notification, would be affected in a manner prejudicial to that person; or

(b) liabilities would be imposed on any person (other than the Commonwealth or an authority of the Commonwealth) in respect of anything done or omitted to be done before the date of notification,

and where, in any regulations, any provision is made in contravention of this sub-section, that provision shall be void and of no effect.

(3) If any regulations are not laid before each House of the Parliament in accordance with the provisions of sub-section (1), they shall be void and of no effect.

(4) If either House of the Parliament, in pursuance of a motion of which notice has been given within 15 sitting days after any regulations have been laid before that House, passes a resolution disallowing any of those regulations, any regulation so disallowed shall thereupon cease to have effect.

(5) If, at the expiration of 15 sitting days after notice of a motion to disallow any regulation has been given in a House of the Parliament, being notice given within 15 sitting days after the regulation has been laid before that House—

- (a) the notice has not been withdrawn and the motion has not been called on; or
- (b) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of,

the regulation specified in the motion shall thereupon be deemed to have been disallowed.

(5A) If, before the expiration of 15 sitting days after notice of a motion to disallow any regulation has been given in a House of the Parliament—

- (a) ~~that House is dissolved or, being the House of Representatives, expires, or the Parliament is prorogued; and~~ *of Resolution*
- (b) at the time of the dissolution, expiry or prorogation, as the case may be—
 - (i) the notice has not been withdrawn and the motion has not been called on; or
 - (ii) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of,

*first-
motion*

the regulation shall, for the purposes of sub-sections (4) and (5), be deemed to have been laid before that House on the first sitting day of that House after the dissolution, expiry or prorogation, as the case may be. *first-
motion*

“(6) Where a regulation is disallowed, or is deemed to have been disallowed, under this section or becomes void and of no effect by virtue of the operation of sub-section (3), the disallowance of the regulation or the operation of sub-section (3) in relation to the regulation, as the case may be, has the same effect as a repeal of the regulation.

“(7) Where—

- (a) a regulation (in this sub-section referred to as the ‘relevant regulation’) is disallowed, or is deemed to have been disallowed, under this section or becomes void and of no effect by virtue of the operation of sub-section (3); and
- (b) the relevant regulation repealed, in whole or in part, another regulation that was in force immediately before the relevant regulation came into operation,

the disallowance of the relevant regulation or the operation of sub-section (3) in relation to the relevant regulation, as the case may be, has the effect of reviving that other regulation from and including the date of the disallowance or the date on which the relevant regulation became void and of no effect by virtue of that operation of sub-section (3), as the case may be, as if the relevant regulation had not been made.”

49. (1) Where, in pursuance of section 48, either House of the Parliament disallows any regulation, or any regulation is deemed to have been disallowed, no regulation, being the same in substance as the regulation so disallowed, or deemed to have been disallowed, shall be made within 6 months after the date of the disallowance, unless—

- (a) in the case of a regulation disallowed by resolution—the resolution has been rescinded by the House of the Parliament by which it was passed; or
- (b) in the case of a regulation deemed to have been disallowed—the House of the Parliament in which notice of the motion to disallow the regulation was given by resolution approves the making of a regulation the same in substance as the regulation deemed to have been disallowed.

(2) Any regulation made in contravention of this section shall be void and of no effect.

Disallowed regulations not to be re-made unless resolution rescinded or House approves
 Added by No. 10, 1937, s. 13
 Sub-section (1) amended by No. 19, 1963, s. 5; No. 144, 1976, s. 9

APPENDIX R

Regulation 537, as amended, of
Revised Regulations of Ontario, 1980 under the Interpretation Act

REGULATION 537

under the Interpretation Act

FEES PAYABLE UNDER VARIOUS ACTS

AMBULANCE ACT

1. The following fees shall be paid in respect of an emergency medical care examination set by the Director of the Ambulance Services Branch of the Ministry of Health:

1. For an original emergency medical care examination under subsection 16 (2) of Regulation 14 of Revised Regulations of Ontario, 1980, to be submitted with the application for the examination \$35
2. For the second emergency medical care examination under subsection 18 (1) of Regulation 14 of Revised Regulations of Ontario, 1980 \$10
3. For a requalifying examination under subsection 17 (1) of Regulation 14 of Revised Regulations of Ontario, 1980 \$35

O. Reg. 856/78, s. 1.

BUSINESS CORPORATIONS ACT

2. The fee that shall be paid to the Ontario Securities Commission upon application to the Commission under subsection 1 (8) or subsection 117 (2) of the

Business Corporations Act for an order is \$100. O. Reg. 523/71, s. 1.

HOSPITAL LABOUR DISPUTES ARBITRATIONS ACT

3. The fee for copies of an award filed under subsection 10 (1) of Regulation 504 of Revised Regulations of Ontario, 1980 is 50 cents per page. O. Reg. 782/79, s. 1.

LABOUR RELATIONS ACT

4. The fee for copies of an award filed under subsection 4 (1) of Regulation 544 of Revised Regulations of Ontario, 1980 is,

- (a) 50 cents for each page unless the person requesting the copying has paid the fee described in clause (b); or
- (b) \$3,000 for a copy of every award filed in a one-year period. O. Reg. 497/86, s. 1

LIQUOR CONTROL ACT

5.—(1) A person appointed as a sacramental wine vendor by the Liquor Control board shall pay an annual fee of,

- (a) \$25; and
- (b) 10½ per cent of the gross selling price of all sacramental wine sold.

(2) For the purpose of subsection (1), gross selling price does not include Ontario Retail Sales Tax. O. Reg. 1010/75, s. 1.

* O. Reg. 446/83, as amended, under the Business Corporations Act, 1982, now prescribes the fee payable to the Commission for an exemption order. S. 2 of Regulation 537, however, has not been repealed in whole or in part.

APPENDIX S

The Ontario Gazette
March 19, 1988, pp. 1703–1705
(example of format)

Publications Under The Regulations Act

March 19th, 1988

ENVIRONMENTAL ASSESSMENT ACT

O. Reg. 119/88.

Exemption—The Corporation of the
County of Essex—ESSE—CT-2.

Made—February 18th, 1988.

Approved—February 18th, 1988.

Filed—February 29th, 1988.

ORDER MADE UNDER THE ENVIRONMENTAL ASSESSMENT ACT

EXEMPTION—THE CORPORATION OF THE COUNTY OF ESSEX—ESSE—CT-2

Having received a request from the Corporation of the County of Essex (the "County") that an undertaking, namely:

The modified use until December 31, 1992, of the existing Essex County Landfill No. 3 Site currently approved under the Provisional Certificate of Approval No. 011501 under the *Environmental Protection Act* and located on parts of Lots 14 and 15, Concession 4 in the Township of Maidstone, County of Essex, in order to landfill an area of the site in excess of the height and depth restrictions in the current approval

be exempt from the application of the *Environmental Assessment Act* pursuant to section 29; and

Having been advised by the County that if the undertaking is subject to the application of the Act, the following injury, damage or interference with the persons and property indicated will occur:

- A. Other available interim waste management options will result in significant increases in costs and under current certificates of approval may only handle a portion of the total wastes currently being received at this site.
- B. Lack of disposal options for the total wastes will result in significant environmental effects and risks to human health.

Having weighed such injury, damage or interference against the betterment of the people of the whole or any part of Ontario by the protection, conservation and wise management in Ontario of the environment which would result from the undertaking being subject to the application of the *Environmental Assessment Act*;

The undersigned is of the opinion that it is in the public interest to order and orders that the undertaking is exempt from the application of the *Environmental Assessment Act* for the following reasons:

- A. The undertaking is clearly an interim measure for which there is no other reasonable waste management alternative available within the necessary time frame.
- B. The County of Essex is currently undertaking a waste management master plan in accordance with the *Environmental Assessment Act*. It is the intention of the County to implement a long term waste management system in accordance with the master plan. The county intends to implement the plan by December 31, 1992.
- C. The undertaking was recommended after an examination of impacts to the environment of both alternatives to and alternative methods.
- D. Public meetings were held where the modified use of Essex County Landfill No. 3 was discussed, the preferred concept was presented, along with the regulatory processes that must be followed. Concerns with the current operations of Essex County Landfill No. 3 were also discussed at those meetings and these are documented in the "Summary Technical Document" submitted by the County of Essex in support of the exemption request.
- E. The modified use of the Essex County Landfill No. 3 is subject to approval under the *Environmental Protection Act* and requires that a public hearing be held before the Environmental Assessment Board.

This exemption is subject to the following terms and conditions:

- 1. No waste shall be deposited at Essex County Landfill No. 3 Site after December 31, 1992 or above the contours described in any Certificate of Approval which is issued following the hearing mentioned in E above.
- 2. Within the interim period of time specified in Condition 1, the County shall file a report annually, on or before the anniversary date of this Order, with the Director, Environmental Assessment Branch, Ministry of the Environment, for filing with the Public Records kept under section 31 of the

Environmental Assessment Act by the Branch at the Ministry's head office located at 135 St. Clair Avenue West, Toronto, Ontario M4V 1P5. The annual reports will outline the County's progress in preparing and implementing a long term waste management master plan. O. Reg. 119/88.

JAMES BRADLEY
Minister of the Environment

(2778)

12

MILK ACT

O. Reg. 120/88.
Industrial Milk—Marketing.
Made—February 25th, 1988.
Filed—February 29th, 1988.

REGULATION TO AMEND
REGULATION 623 OF
REVISED REGULATIONS
OF ONTARIO, 1980
MADE UNDER THE
MILK ACT

1. Subsection 13 (6) of Regulation 623 of Revised Regulations of Ontario, 1980, as remade by subsection 1 (2) of Ontario Regulation 454/87, is revoked and the following substituted therefor:

(6) All Class 5a milk supplied to a processor shall be sold by the marketing board and bought by the processor for not less than a minimum price of \$41.19 per hectolitre for milk containing 3.6 kilograms of milk-fat per hectolitre. O. Reg. 120/88, s. 1.

2. This Regulation comes into force on the 1st day of March, 1988.

THE ONTARIO MILK MARKETING BOARD:

J. GRANT SMITH
Chairman

H. PARKER
Secretary

Dated at Toronto, this 25th day of February, 1988.

(2779)

12

MILK ACT

O. Reg. 121/88.
Marketing of Milk to Fluid Milk
Processors.
Made—February 25th, 1988.
Filed—February 29th, 1988.

REGULATION TO AMEND
ONTARIO REGULATION 541/81
MADE UNDER THE
MILK ACT

1. Subsection 15 (10) of Ontario Regulation 541/81, as remade by subsection 1 (2) of Ontario Regulation 455/87, is revoked and the following substituted therefor:

(10) All Class 5a milk supplied to a processor shall be sold by the marketing board and bought by the processor for not less than a minimum price of \$41.19 per hectolitre for milk containing 3.6 kilograms of milk-fat per hectolitre. O. Reg. 121/88, s. 1.

2. This Regulation comes into force on the 1st day of March, 1988.

THE ONTARIO MILK MARKETING BOARD:

J. GRANT SMITH
Chairman

H. PARKER
Secretary

Dated at Mississauga, this 25th day of February, 1988.

(2780)

12

LIQUOR LICENCE ACT

O. Reg. 122/88.
General.
Made—February 25th, 1988.
Filed—February 29th, 1988.

REGULATION TO AMEND
REGULATION 581 OF
REVISED REGULATIONS
OF ONTARIO, 1980
MADE UNDER THE
LIQUOR LICENCE ACT

1. Section 60 of Regulation 581 of Revised Regulations of Ontario, 1980 is revoked.

2. This Regulation comes into force on the 1st day of April, 1988.
- (2781)

12

HIGHWAY TRAFFIC ACT

O. Reg. 123/88.
Special Permits.
Made—February 11th, 1988.
Filed—February 29th, 1988.

REGULATION TO AMEND
REGULATION 488 OF
REVISED REGULATIONS
OF ONTARIO, 1980
MADE UNDER THE
HIGHWAY TRAFFIC ACT

1. Subsection 1 (1) of Regulation 488 of Revised Regulations of Ontario, 1980 is revoked and the following substituted therefor:

(1) Subject to subsection (2), where the Ministry issues a permit under section 93 of the Act authorizing the moving of heavy vehicles, loads, objects or structures in excess of the dimensional or weight limits set out in section 92 and Part VII of the Act, respectively, the following fees shall be paid to the Ministry:

1. For an annual term \$150.00

2. For a project 100.00

3. For a single trip 25.00

4. For a replacement permit in case of loss or destruction of the original . 5.00

O. Reg. 123/88, s. 1.

2. Section 2 of the said Regulation is revoked on the 1st day of May, 1988.

(2782)

12
- PLANNING ACT, 1983
- O. Reg. 124/88.
Restricted Areas—District of Manitoulin, Geographic townships of Campbell, Dawson, Mills and Robinson.
Made—February 24th, 1988.
Filed—March 1st, 1988.
- REGULATION TO AMEND
ONTARIO REGULATION 672/81
MADE UNDER THE
PLANNING ACT, 1983
1. Ontario Regulation 672/81 is amended by adding thereto the following section:

94.—(1) Notwithstanding that the land described in subsection (2) is shown on the maps referred to in section 4 as being in a General Industrial Zone, it shall be deemed to be in a Rural Zone to which Part XI applies.

(2) Subsection (1) applies to that parcel of land in the geographic Township of Dawson in the District of Manitoulin being that part of Lot 33 in Concession IX, described as follows:

Commencing at a point in the northerly boundary of Lot 33, 330 feet westerly from the northeast angle of Lot 33;

Thence continuing westerly along the northerly boundary of Lot 33, 726 feet;

Thence southerly along a line drawn parallel to the westerly boundary of Lot 33, 429 feet;

Thence easterly along a line drawn parallel to the northerly boundary of Lot 33, 726 feet;

Thence northerly along a line drawn parallel to the easterly boundary of Lot 33, 429 feet more or less to the point of commencement. O. Reg. 124/88, s. 1.
- PAULINE MORRIS
Director
Plans Administration Branch
North and East
Ministry of Municipal Affairs
- Dated at Toronto, this 24th day of February, 1988.
- (2783)

12
- 651

APPENDIX T

Table of Regulations,
filed under the Regulations Act
to the 31st day of December 1987, pp. 1-3
(example of format)

TABLE OF REGULATIONS

FILED UNDER THE REGULATIONS ACT TO THE 31st DAY OF DECEMBER, 1987

Showing the Regulations contained in Revised Regulations of Ontario, 1980, regulations under the Parkway Belt Planning and Development Act and certain regulations under the Planning Act shown in the Schedule to Revised Regulations of Ontario, 1980, and subsequent Regulations filed to the 31st day of December, 1987.

	R.R.O. 1980	O.Reg.	Date of Gazette
ABANDONED ORCHARDS ACT			
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ADMINISTRATION OF JUSTICE ACT			
Fee Payable to Provincial Court (Civil Division) Referees.....		612/85	Dec. 14/85
amended.....		692/87	Jan. 2/88
Fees and Allowances - Provincial Court (Civil Division).....		795/84	Jan. 5/85
amended.....		601/85	Dec. 14/85
amended.....		691/87	Jan. 2/88
Fees and Expenses - Court Reporters.....	2		
(revoked by 282/82)			
Court Reporters and Court Monitors.....		36/84	Feb. 11/84
amended.....		404/84	July 14/84
amended.....		610/85	Dec. 14/85
amended.....		57/87	Feb. 21/87
amended.....		693/87	Jan. 2/88
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amended.....		281/82	May 15/82
(revoked by 794/84)			
Jurors and Crown Witnesses.....	4		
amended.....		281/82	May 15/82
amended.....		607/85	Dec. 14/85
Justices of the Peace.....	5		
amended.....		281/82	May 15/82
amended.....		399/84	July 07/84
amended.....		404/84	July 14/84
amended.....		676/84	Nov. 10/84
amended.....		316/85	June 29/85
(revoked by 620/85)			
Justices of the Peace.....		620/85	Dec. 14/85
amended.....		22/86	Feb. 1/86
amended.....		188/86	Apr. 19/86
amended.....		456/86	Aug. 16/86
amended.....		725/86	Dec. 27/86
amended.....		695/87	Jan. 2/88

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	R.R.O. 1980	O.Reg.	Date of Gazette	
Non-Salaried Court Reporters and Court Monitors..... (revoked by 36/84)		282/82	May	15/82
Sheriff's Officers, Process Servers, Escorts and Municipal Police Forces..... amended..... amended.....		794/84 603/85 694/87	Jan. Dec. Jan.	5/85 14/85 2/88
Fees -				
Construction Liens..... amended..... amended.....		158/83 405/84 605/85	Apr. July Dec.	2/83 14/84 14/85
Sheriffs..... amended..... amended..... amended..... amended..... (revoked by 811/84)	6	278/81 281/82 245/83 404/84	May May May July	23/81 15/82 14/83 14/84
Sheriffs..... amended..... (revoked by 609/86)		811/84 608/85	Jan. Dec.	5/85 14/85
Sheriffs.....		609/86	Oct.	25/86
Supreme Court and County Courts..... amended..... amended..... amended..... (revoked by 812/84)	7	281/82 245/83 404/84	May May July	15/82 14/83 14/84
Supreme Court and District Court..... amended..... (revoked by 608/86)		812/84 602/85	Jan. Dec.	5/85 14/85
Supreme Court and District Court.....		608/86	Oct.	25/86
Unified Family Court..... amended..... amended..... amended..... amended..... amended..... amended.....	8	281/82 245/83 37/84 404/84 609/85 607/86	May May Feb. July Dec. Oct.	15/82 14/83 11/84 14/84 14/85 25/86
Investigation Fee - Official Guardian..... (revoked by 495/81)	9			
Investigation Fee - Official Guardian..... amended..... amended..... (revoked by 606/85)		495/81 244/83 366/84	Aug. May June	8/81 14/83 23/84
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amended.....		604/85	Dec.	14/85
Telewarrants.....		621/85	Dec.	14/85
(revoked by 188/86)				
To Amend Certain Regulations.....		281/82	May	15/82
AGRICULTURAL ASSOCIATIONS ACT				
Designation of Associations.....	10			
amended.....		611/81	Oct.	3/81
amended.....		852/82	Jan.	15/83
amended.....		99/83	Mar.	5/83
amended.....		413/84	July	14/84
amended.....		12/85	Jan.	26/85
amended.....		427/85	Sept.	14/85
amended.....		114/87	Mar.	21/87
AGRICULTURAL DEVELOPMENT FINANCE ACT				
Interest Rate.....	11			
amended.....		699/85	Jan.	11/86
amended.....		344/86	June	28/86
AGRICULTURAL SOCIETIES ACT				
General.....	12			
amended.....		107/83	Mar.	12/83
AGRICULTURAL TILE DRAINAGE INSTALLATION ACT				
General.....	13			
amended.....		85/83	Feb.	26/83
AMBULANCE ACT				
General.....	14			
amended.....		627/81	Oct.	10/81
amended.....		571/82	Sept.	11/82
amended.....		832/82	Jan.	8/83
amended.....		54/84	Feb.	18/84
amended.....		542/84	Sept.	8/84
amended.....		496/85	Oct.	26/85
AMUSEMENT DEVICES ACT, 1986				
General.....		248/86	May	17/86
(revoked by 342/87)				
General.....		342/87	June	27/87
ANATOMY ACT				
General.....	15			
amended.....		216/81	Apr.	25/81
amended.....		412/85	Aug.	31/85

APPENDIX U

Parkway Belt Planning and Development Act
R.S.O. 1980, c. 368, s. 4

4.—(1) On and after the 4th day of June, 1973, the Minister may, in respect of any land within the Parkway Belt Planning Area, make land use regulations and in any such regulations the Minister may exercise any of the powers conferred upon the Minister under clause 35 (1) (a) of the *Planning Act*, and notwithstanding subsection 35 (4) of the *Planning Act*, any such regulation may be made that does not conform to a local plan in effect in the area covered by the regulation. *

(2) Any regulation made by the Minister under subsection (1) may be retroactive in its application and may provide that it comes into force and has effect on and after a day not earlier than the 4th day of June, 1973.

*Note: The Minister's zoning powers are now contained in s. 46 of the Planning Act, 1983.

APPENDIX V

Niagara Escarpment Planning and Development Act
R.S.O. 1980, c. 316, as amended, ss. 22–23

Regulations **22.** The Minister may make regulations designating any area or areas of land within the Niagara Escarpment Planning Area as an area of development control. R.S.O. 1980, c. 316, s. 22.

Interpretation **23.**—(1) In this section and in section 24, subsections 25 (1), (3) to (9) and (11) and (12) and section 26, “Minister” means the Minister of Municipal Affairs. 1981, c. 19, s. 14.

Regulations (2) The Minister may make regulations,

R.S.O. 1980,
c. 379

- (a) providing that where an area of development control is designated, such zoning by-laws and such orders of the Minister made under section 35 of the *Planning Act*, or any part thereof, as are designated in the regulation, cease to have effect in the area or in any defined part thereof provided that where land is removed from an area of development control such land is thereupon subject again to the aforementioned by-laws or orders or parts thereof, as the case may be, unless in the meantime such by-laws or orders or parts thereof have been repealed or revoked; *
- (b) providing for the issuance of development permits and prescribing terms and conditions of permits;
- (c) providing for the exemption of any class or classes of development within any development area from the requirement of obtaining a development permit;
- (d) prescribing the form of application for a development permit. R.S.O. 1980, c. 316, s. 23 (2).

* Note: The Minister's zoning powers are now contained in s. 46 of the Planning Act, 1983.

APPENDIX W

Queensland Regulatory Reform Act 1986
Act No. 14 of 1986



ANNO TRICESIMO QUINTO
ELIZABETHAE SECUNDAE REGINAE

No. 14 of 1986

An Act to provide for the expiration of subordinate legislation
and for other purposes

[ASSENTED TO 26TH MARCH, 1986]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title. This Act may be cited as the *Regulatory Reform Act 1986*.

2. Objective of Act. The principle objective of this Act is to provide a mechanism for the review and revocation of out-dated subordinate legislation with a view to—

- (a) substantially reducing the accumulated regulatory burden on business without compromising law and order and essential economic, social and environmental objectives;
- (b) providing a regulatory framework which eliminates unnecessary costs on business, and which minimises unavoidable costs;
- (c) improving the effectiveness of essential regulatory activity;
- (d) improving the efficiency of the formulation and administration of regulatory requirements; and
- (e) providing a regulatory framework which can accommodate changes in economic circumstances, social standards and technology.

3. Interpretation. In this Act except where the contrary intention appears—

“Minister” means the Premier or other Minister of the Crown who at the material time is administering this Act and includes a Minister of the Crown who is temporarily performing the duties of the Minister;

“subordinate legislation” means any regulation, rule or by-law that, pursuant to any Act—

- (a) is made by the Governor in Council;

or

- (b) is made by any other person or body and is required by law to be published in the Gazette,
but does not include—

- (i) any by-law of a Local Authority within the meaning of the *Local Government Act 1936-1986* or any ordinance of Brisbane City Council;
 - (ii) any rule of practice or procedure of any court or of the Industrial Conciliation and Arbitration Commission;
- or
- (iii) any Proclamation or Order in Council, except an Order in Council that purports to provide for a regulation.

4. Application of Act. (1) This Act applies to all subordinate legislation, except where it is otherwise expressly prescribed.

(2) This Act does not apply to—

- (a) subordinate legislation that is the product of an agreement to enact legislation that is to be uniform or substantially uniform throughout Australia or in Queensland and one or more of the other States or the Territories of Australia;
- (b) subordinate legislation that amends an Act;
- or
- (c) subordinate legislation that is exempted from the application of this Act by Order in Council, made upon the recommendation of the Minister.

5. Expiration of subordinate legislation. (1) Unless it is sooner revoked, subordinate legislation—

- (a) made on or before 30 June 1962 shall expire on 30 June 1987;
- (b) made after 30 June 1962 and before or on 30 June 1975 shall expire on 30 June 1988;
- (c) made after 30 June 1975 and before or on 30 June 1986 shall expire on 30 June 1989;
- (d) made after 30 June 1986 shall expire on the seventh anniversary of the day on which it is made.

(2) Subordinate legislation referred to in subsection (1) shall be taken to have been made—

- (a) in the case of subordinate legislation made by the Governor in Council, on the day on which it was or is published in the *Gazette*;
- (b) in the case of subordinate legislation made by another person or body and approved by the Governor in Council, on the day on which the approval was or is published in the *Gazette*;
- (c) in the case of any other subordinate legislation, on the day on which it was or is published in the *Gazette*.

(3) Where subordinate legislation expires in accordance with this Act any subordinate legislation that has amended that subordinate legislation and any provision of subordinate legislation, which is a provision that amends the first-mentioned subordinate legislation shall expire at the same time.

6. Revival of subordinate legislation. (1) If, upon the advice of the Minister, the Governor in Council is satisfied—

- (a) that it is necessary or desirable for the peace, welfare and good government of Queensland or any part thereof that subordinate legislation, which has expired in accordance with this Act, should be of force and effect;
- and
- (b) that it is impracticable in the circumstances to enact fresh legislation or subordinate legislation in place of the expired subordinate legislation,

the expired subordinate legislation may be revived by Proclamation whereupon it shall be deemed to have been made on the day its revival takes effect and shall be of force and effect subject to this Act.

(2) Revival of subordinate Legislation under subsection (1) shall not affect the doing or omitting of anything before its revival or the continuance of anything done before its revival.

7. Termination of Act. This Act shall expire on 31 December 1993.

8. Effect of expiration of Act or subordinate legislation. (1) Upon its expiration as prescribed, this Act or, as the case may be, subordinate legislation shall, subject to subsection (2), cease to be of force and effect.

(2) Section 20 (1) and (2) of the *Acts Interpretation Act 1954-1977* applies not only in relation to this Act, upon its expiration, but also in relation to all subordinate legislation that expires in accordance with this Act as if the subordinate legislation were an Act.

APPENDIX X

Cabinet Office, "Information Sheet for Regulations"

Information Sheet for Regulations

Date Prepared

APPENDIX

Ministry

Branch

Prepared by

Telephone No.

Management Board
Approval Required

☐

No

☐

1. Act (Title and P.S.O. Ref.)

2. Title of Regulation

3. Background Comments (e.g. Ministry Announcements, Meetings with Special Interest Groups, etc.)

4. Reason(s) for Proposed Regulation

5. Type of Submission

☐

New

☐

Amended (Explain) ►

Type of Textual Change

☐

Word(s)

☐

New Paragraph(s)

☐

Numeric

☐

Section

☐

Sub-section

☐

Chapter

6. Urgent — If yes, explain

7. Consistent with Government Policy — Explain

☐

No

☐

Yes

8. Affects Public — If yes, explain

9. Affects Other Programs — If yes, explain

10. Retroactive — If yes, explain

11. Unusual or Unexpected Use — If yes, explain

12. If Applicable, Name Riding(s) Affected

13. Other Considerations

APPENDIX Y

Citizens' Code of Regulatory Fairness, 1986
(federal)

Citizens' Code

The Citizens' Code of Regulatory Fairness

When a government regulates, it limits the freedom of the individual. In a democratic country, it follows that the citizen should have a full opportunity to be informed about and participate in regulatory decisions. Moreover, the citizen is entitled to know the government's explicit policy and criteria for exercising regulatory power in order to have a basis for "regulating the regulators" and judging the regulatory performance of the government.

In recognition of these important principles, the federal government has developed this Citizens' Code of Regulatory Fairness. It is based on the government's fundamental commitment to openness, fairness, efficiency and accountability.

1. Canadians are entitled to expect that the government's regulation will be characterized by *minimum interference with individual freedom* consistent with the protection of community interests.
2. The government will encourage and facilitate a *full opportunity for consultation and participation* by Canadians in the federal regulatory process.
3. The government will provide Canadians with *adequate early notice* of possible regulatory initiatives.
4. The government will take measures to ensure *greater efficiency and promptness in discretionary and adjudicative regulatory decision-making*.
5. Once regulatory requirements have been established in law, the government will *communicate to Canadians, in clear language*, what the regulatory requirements are, and why they have been adopted.

Citizens' Code

6. The rules, sanctions, processes, and actions of regulatory authorities will be *securely founded in law*.
7. The government will ensure that *officials* responsible for developing, implementing or enforcing regulations are *held accountable* for their advice and actions.
8. The government will take all possible measures to ensure that *businesses of different size are not burdened disproportionately* by the imposition of regulatory requirements.
9. The government will ensure that the governments of the *provinces and territories are given early notice and adequate opportunity to consult* on federal regulatory initiatives affecting their interests.
10. The government will not use regulation unless it has clear evidence that:
 - . *a problem exists*;
 - . *government intervention is justified*; and
 - . *regulation is the best alternative* open to the government.
11. The government will ensure that the *benefits of regulation exceed the costs* and will give particularly careful consideration to all new regulation that could impede economic growth or job creation.
12. The government will *avoid introducing regulations that control supply, price, entry, and exit in competitive markets* except when overriding national interests are at stake.
13. The *sanctions and enforcement powers* specified in federal regulatory legislation will be *proportionate and appropriate to the seriousness of the violation*.

Citizens' Code

14. The government will *enhance the predictability of the exercise of discretionary powers* by federal regulatory authorities and ensure, to the maximum extent possible, *inter-regional consistency in the administration of regulations*.
15. The government will *encourage the public to exercise its duty to criticize ineffective or inefficient regulatory initiatives* and to *offer suggestions for better or "smarter" ways* of solving problems and achieving the government's social and economic objectives.

CA 20N
XC 15
- 571



Standing Committee on Regulations and Private Bills

First Report 1989



2nd Session 34th Parliament
38 Elizabeth II

STANDING COMMITTEE
ON REGULATIONS AND
PRIVATE BILLS

FIRST REPORT 1989

2nd Session, 34th Parliament
38 Elizabeth II

MEMBERSHIP AND STAFF OF THE COMMITTEE

ALLAN FURLONG
Chairman of the Committee

JOHN SOLA
Vice-Chairman of the Committee

KENNETH BLACK

FRANK MICLASH

KENNETH KEYES

KARL MORIN-STROM

LAUREANO LEONE

JIM POLLOCK

BOB MACKENZIE

DAVID SMITH (LAMBTON)

GEORGE McCAGUE

Lisa Freedman
Clerk of the Committee

Tannis Manikel
Clerk pro tem. of the Committee

Philip Kaye; Avrum Fenson; Andrew McNaught
Research Officers
Legislative Research Service

Andrew Dekany
Former Counsel to the Committee



The Honourable Hugh Edighoffer, M.P.P.
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on Regulations and Private Bills has the honour to present its First Report for the Second Session of the Thirty-fourth Parliament and commends it to the House.

A handwritten signature in cursive script, appearing to read 'Furlong'.

Allan Furlong, M.P.P.
Chairman

Queen's Park
June, 1989

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APPENDIX C: List of Acts under whose authority five or more regulations were filed in 1987

APPENDIX D: List of Ministries and other authorities, and the number of regulations filed in 1987 for which each is responsible

NUMERICAL INDEX OF REGULATIONS REPORTED

INTRODUCTION

Your Committee presents this Report on Regulations filed in 1987 in accordance with its permanent reference, s. 12 of the Regulations Act, R.S.O. 1980, c. 446 (reproduced as Appendix A), which provides that the Committee shall consider the scope of, and the authority for, all regulations, but not the underlying policies or legislative objectives.

The Terms of Reference of the Committee are contained in Standing Order 90(j) of the Legislative Assembly, which is reproduced as Appendix B.

STATISTICS FOR 1987

During 1987, 725 regulations were filed, and were published in 2,339 double-column pages in The Ontario Gazette. The number of pages of text, down about twenty percent from 1986, is very close to the average for the ten years ending in 1987; the number of regulations, down five percent from 1986, is the second smallest in over a decade. Figures for the years 1978-1987 are as follows:

<u>Year</u>	<u>Regulations</u>	<u>Pages</u>
1978	1,007	1,965
1979	962	2,568
1980	1,141	2,138
1981	884	1,952
1982	837	2,021
1983	815	2,245
1984	840	3,667
1985	703	1,726
1986	763	2,946
1987	725	2,339

The regulations were made under the authority of 145 Acts under the administration of 23 Ministries, the Office of the Assembly, the Office of the Premier, and Management Board of Cabinet. One hundred of the Acts have fewer than five regulations made under each, and account for 175 regulations; 550 regulations are made under the 45 Acts with five or more regulations under each.

As was the case in 1986, the Planning Act, 1983 accounted for more regulations than any other Act, though the number, eighty-two, is down one-third from the previous year's total. This Act and the six Acts with the next largest numbers of regulations account for nearly one-third of all regulations filed in 1987: the Highway Traffic Act (27); the Residential Rent Regulation Act, 1986 (26); the Crop Insurance Act (Ontario) and the Environmental Assessment Act (25 each); and the Game and Fish Act and the Health Insurance Act (19 each). Except for the Residential Rent Regulation Act, 1986, these Acts, together with the Parkway Belt Planning and Development Act, appeared in one or both of the comparable lists for 1985 and 1986. The Crop Insurance Act (Ontario) will not appear on such lists in the future if the amendments described on page 6 are made. A complete list of Acts with five or more regulations appears as Appendix C.

Nearly half of the regulations fall under the jurisdiction of four Ministries: Municipal Affairs (123); Health (102); Agriculture and Food (65); and Consumer and Commercial Relations (57). The Ministry of Consumer and Commercial Relations administers more Acts under which regulations were filed in 1987 - twenty - than any other Ministry. Appendix D consists of a list of Ministries and other authorities with the number of regulations administered by each.

REGULATIONS REPORTED

(a) The Guidelines Violated

After reviewing the 725 regulations filed in 1987, the Committee wrote to 14 Ministries and the Office of the Premier to make inquiries about certain regulations. All the letters of inquiry received responses commenting on all but two of the regulations questioned. These responses, and information and advice generously made available by the Registrar of Regulations, are frequently reflected in this report, in which the Committee comments upon 32 regulations. The comments are arranged by Ministry, and within those headings, by the guideline violated.

The three guidelines the Committee found to be violated are:

- **Regulations should be in strict accord with the statute conferring of power ("Statutory Authority"):** the Committee reports 12 regulations which are made (i) on topics not authorized in the statute, or (ii) by a maker other than the one specified in the statute for the particular regulation.
- **Regulations should be expressed in precise and unambiguous language ("Precision of Language"):** five regulations are reported, a number sharply down from 1986, reflecting the Committee's conclusion that typographical errors that do not divert anyone from the true meaning of the regulations do not violate this guideline.
- **Regulations should not have retrospective effect unless clearly authorized by statute ("Retrospectivity"):** this guideline refers to regulations which purport to change the legal status of something in the past, such as changing a hunting limit, and making the change effective a date earlier than the one on which the regulation was filed. It also embraces regulations which apply in the future, but with reference to a past period. An example would be a regulation providing for the payment, on a future date, of a cost-of-living supplement for last year. Regulations not infrequently reflect the results of negotiations or collective bargaining which deal with catch-up payments for past work or services, and are, in such cases, retrospective. Where there is no clear authority in the statute for the retrospectivity, the Committee has reported the violation, but has, where appropriate, recommended that the statute be amended so as to allow for the necessary retrospectivity.

(b) The Regulations

In their responses to the Committee's inquiries about the regulations reported in this section, the Ministries in some cases agreed without reservation that the violation in fact took place, or expressed the opinion that the violation was mitigated by certain circumstances. In other cases, the Ministry disagreed in whole or in part or made no specific comments on the regulation in question. **These latter responses are signalled by an asterisk.**

It should be noted that a reference to a regulation frequently relates only to a specific provision in the regulation in question.

OFFICE OF THE PREMIER

RETROSPECTIVITY

*O. Reg. 536/87 under the Executive Council Act

This regulation is an Order in Council, made July 15, 1987, transferring the administration of the Ontario Municipal Employees Retirement System Act from the Treasurer of Ontario to the Minister of Municipal Affairs; it is expressed to be effective July 15, 1987. The regulation was filed with the Registrar of Regulations September 21, 1987, and is thus retroactive.

The Executive Director of the Office of the Premier has advised that the Order embodied in this regulation does not affect the rights and liberties of citizens at large; it is therefore not of a "legislative nature" so as to require publication under the Regulations Act; it was filed voluntarily simply to provide useful information to the public; and if such publication inadvertently creates technical problems "the Government could consider not filing [such Orders in Council] or . . . using an alternative means of publication without filing."

The Committee, in its First Report 1988, dealt with a similar regulation, O. Reg. 417/86 under the Executive Council Act, which was likewise filed after the date on which the Order in Council it embodied was expressed to come into effect. The matter had been raised with the Cabinet Office and the Registrar of Regulations, and the Committee was able to report as follows (p. 20):

The Secretary of the Cabinet has advised that, until mid-July, 1986, the question of whether it was necessary to file such orders in council was unclear. In the past such orders in council had been filed as a matter of public interest and information. After correspondence between your Committee's Counsel, the Cabinet Office and the Registrar of Regulations the position was clarified. As a result, the regulation was filed promptly after the necessity for filing was made clear. The Secretary of the Cabinet has further advised that, in future, every effort will be made to prevent retroactivity in the filing of such orders as regulations.

It is therefore the view of the Committee that it has been settled that regulations such as O. Reg. 536/87 should be filed in accordance with the Regulations Act and that efforts should be made to avoid instances of retroactivity.

MINISTRY OF AGRICULTURE AND FOOD

STATUTORY AUTHORITY

O. Reg. 243/87 under the Milk Act

This regulation amends Regulation 619, R.R.O. 1980, to provide that the Milk Marketing Board can suspend or revoke a licence to engage in the producing of cream in certain circumstances described in clauses 3(4)(a) and (c) of the amended regulation. The statute did not authorize regulations so empowering the Board in these circumstances when O. Reg. 243/87 was made.

The Milk Act was subsequently amended by S.O. 1988, c. 13 and now authorizes provisions such as those contained in clause 3(4)(a) of Regulation 619 as amended; clause 3(4)(c) remains unauthorized and Ministry counsel has advised that the matter will be brought to the attention of the solicitor for the Ontario Cream Producers' Marketing Board "for his consideration the next time Reg. 619 is amended."

PRECISION OF LANGUAGE

O. Reg. 250/87 under the Milk Act

This regulation, in s. 46(1), sets out three separate requirements for containers used in the transport of cream. All the requirements apply at all times, and the "or" between the second and third, suggesting that the list of requirements is disjunctive, is in error; the Ministry agrees and says that it will replace the "or" with an "and".

The Statute authorizes the making of regulations prescribing the books and records to be kept by "distributors and operators of plants." Ss. 118 and 119 of the regulation set out the records to be kept by "processors." Ministry counsel advises that "processor" means "operator of plant," and that the regulation will be amended by substituting the latter term for the former.

*O. Reg. 478/87 under the Crop Insurance Act

*O. Reg. 490/87 under the Crop Insurance Act

The first regulation requires that premiums for the crop year be paid by the insured person "within ten days after the mailing or delivery" of a final acreage report; the second, in s. 1(4), deems the insured person to have agreed with an adjustment of premium unless the insured person rejects the adjustment in writing "within ten days from the mailing or delivery" of the notification. Ministry counsel explains that the acreage reports and the notifications of adjustment of premium are sometimes mailed and sometimes delivered by the crop insurance agents.

The phrase "within ten days after [or "from"] the mailing or delivery" does not fix with enough clarity the time in which the insured person can preserve his or her interests under the insurance policy. Does "mailing" mean "putting in the mail," or "delivery to the premises of the insured"? The phrase "mailing or delivery" might suggest the latter because that would give "mailing" a meaning analogous to "delivery." But "delivery" might be deemed to take place when a crop insurance agency telephones an insured to say that there is a letter to be picked up. Given the significant financial interests involved, these provisions concerning notice should be drafted having regard to the tradition of strictness and clarity in the method and timing of communicating acceptances in contract law, and time-sensitive notices in civil proceedings.

It may be noted here that the Cabinet Committee on Regulations, the office of the Registrar of Regulations, and the Ministry's Legal Services Branch have been considering a draft amendment to the Crop Insurance Act which would remove crop insurance plans from the regulations system; plans would be established and altered by the Crop Insurance Commission without the requirement of approval by the Lieutenant Governor in Council. Plans already established by means of regulations would be altered, when necessary, in the new manner.

MINISTRY OF THE ATTORNEY GENERAL

RETROSPECTIVITY

O. Reg. 693/87 under the Administration of Justice Act

O. Reg. 695/87 under the Administration of Justice Act

O. Reg. 696/87 under the Justices of the Peace Act

These regulations, all made and filed December 17, 1987, establish, respectively, fees for court reporters and court monitors for services performed from January 1, 1987; fees for certain justices of the peace for duties performed from April 1, 1987; and salaries for full-time justices of the peace effective January 1, 1987.

The Ministry's position is that the practice of backdating compensation increases is permissible provided that the increases are not paid until after the regulation is filed. It is the view of the Committee that these regulations are in violation of the guideline concerning retrospective effect without clear authorization in the statute, and that the defect is not cured by the fact that the retrospective fee increases are not actually paid until after the regulation is filed. The guideline governing the Committee's review of regulations concerns a regulation's retrospective effect, not its retrospective implementation.

The Ministry says that the retrospectivity of O. Reg. 693/87 is due to its tardiness in bringing court reporters' remuneration in line with salaries given its own staff; but the manager of the Ministry's Office of Judicial Support Services explains that owing to procedures whose timing is beyond the Ministry's control - negotiations with the bargaining unit, decisions taken by Management Board - retrospective increases in compensation are sometimes necessary, as was the case with the increases embodied in O. Regs. 695/87 and 696/87. It is the Committee's view, therefore, that statutes authorizing regulations which establish salaries and fees should clearly authorize retrospective changes where experience shows them to be unavoidable.

MINISTRY OF COLLEGES AND UNIVERSITIES

STATUTORY AUTHORITY

***O. Reg. 107/87 under the Ministry of Colleges and Universities Act**

This regulation was made by the Lieutenant Governor in Council. While part of the regulation is clearly authorized by s. 9(2)(b) of the statute, dealing with one of the topics on which the Lieutenant Governor in Council may make regulations, ss. 1 and 2 of the regulation deal with terms on which grants may be made to post-secondary students. This is a topic on which regulations are to be made, under s. 7(a) of the statute, by the Minister, subject to the approval of the Lieutenant Governor.

Ministry counsel says that as the Minister signed the recommendation to Cabinet for approval of the regulation, the regulation was in fact made by the Minister.

The Committee is of the view that this explanation collapses the distinction between regulations made by the Lieutenant Governor in Council and those made by a Minister with the approval of the Lieutenant Governor in Council. In its First Report 1988 the Committee dealt with a similar problem with O. Reg. 412/86 (pp. 13-14):

The Acting Director of the [Revenue] Ministry's Legal Services Branch has confirmed that the regulation should have been made by the Minister. However, the Acting Director expressed the opinion that the regulation is valid since the Minister of Revenue was part of the Executive Council which advised and concurred in the making of the regulation by the Lieutenant Governor, and the Minister signed the recommendation that the regulation be made.

Your Committee is unable to share this opinion because the regulation was not made by the person who should have made it.

The Committee is likewise unable to accept the view of the Ministry of Colleges and Universities with regard to the present regulation and recommends that the provisions in ss. 1 and 2 of the regulation be remade in accordance with s. 7(a) of the statute.

MINISTRY OF COMMUNITY AND SOCIAL SERVICES

RETROSPECTIVITY

O. Reg. 451/87 under the Charitable Institutions Act

O. Reg. 452/87 under the Homes for the Aged and Rest Homes Act

O. Reg. 489/87 under the General Welfare Assistance Act

The first two regulations cited were filed July 31, 1987; the third was filed August 24, 1987. They all increase the per diem ceilings for residential care and extended care. Each regulation contains retrospective provisions in that some effective dates for the increases precede the date on which the regulation was filed.

Ministry counsel agrees that in none of the regulations is the retrospectivity clearly authorized by the statute. He explains that some of the increases, effective January 1, 1987, were the result of negotiations concerning inflationary per diem increases between the Ministry of Health and the Ontario Nursing Home Association which were not completed until May of that year. The timing was not under the control of the Ministry of Community and Social Services; nevertheless that Ministry has jurisdiction over the statutes under which regulations had to be amended to reflect these retrospective changes.

It appears that the nature and timing of negotiations concerning fees paid for residential care often result in fees being set retrospectively. It is the opinion of the Committee that the statutes under which regulations are made embodying these fees should provide clear authority for the necessary retrospectivity.

Ministry counsel observes, in mitigation of the retrospectivity, that the retrospective amendments confer a benefit on certain residents of Ontario. The Committee is of the view that the guideline concerning retrospectivity applies equally to regulations conferring a benefit and those imposing an obligation. In its Second Report 1984, the Committee noted (pp. 17-18) that

one hears from time to time that the rule does or should not apply to cases where the regulation confers a benefit and does not impose a liability or curtail or extinguish an existing right . . .

Suffice it to say that in the opinion of this Committee there is no case law, statute or House order at the present time to support such an exception and that, if we are correct, our duty is to proceed as we have been doing and apply the law and Guideline (d) as it now is. If the Legislature should wish to make an exception to the rule it can do so very easily by an appropriate amendment or the House may do so by amending Guideline (d) . . .

. . . [We] wish to give a warning: any softening of the rule would, we feel certain, lead to many more instances of regulations being filed without statutory authority for retroactive commencement. Too often reliance would be put upon the exception to justify late filing and so be an encouragement to careless administrative practices.

MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS

STATUTORY AUTHORITY

O. Reg. 1/87 under the Liquor Licence Act

This regulation amends a table in Regulation 581, R.R.O. 1980. The table contains eight classes of licence in column 1, and opposite each, in column 2, a list of "Eligible Premises," - eligible, that is, for a particular class of licence. The authority for this lies in s. 39(d) of the statute which provides for regulations "prescribing classes of premises and confining the issuance of any specified class or classes of licences to any specified class or classes of premises."

The eligible premises listed in column 2 are mainly generic descriptions such as "hotels", "canteens" or "theatres" and are thus "classes of premises" as provided for in the statute. However, the table, as amended by the present regulation, lists two

specific premises among those eligible for a "hospitality licence," namely, the office of the Ontario Grape Growers Marketing Board in St. Catharines, and the head office of Brewers Warehousing Co. Ltd. at 79 St. Clair Ave. E., Toronto.

The listing of specific locations as eligible premises appears to the Committee to be outside the regulation-making provision in the statute which has been relied upon. The Ministry's Director of Legal Services writes: "I am sympathetic to your position that a specific premises should not be a 'class of premises.' The regulation could have been worded in a more generic sense with the same result . . ."

O. Reg. 16/87 under the Liquor Licence Act

This regulation amends Regulation 581, R.R.O. 1980 so that the latter now provides, in s. 67(1), that an "application for a card indicating the age of the holder shall be in a form supplied by the [Liquor Licence] Board."

The Act, in s. 39(w), provides that the Lieutenant Governor in Council may make regulations "prescribing the form and content of the application for and of the card for proof of age . . ."

It appears to the Committee that O. Reg. 16/87 is an improper delegation to the Liquor Licence Board by the Lieutenant Governor in Council of the authority to prescribe the form of application for a proof of age card. Such delegation is neither expressly nor impliedly authorized by the statute. The Ministry's Director of Legal Services says that the case law on sub-delegation appears to support the Committee's view; and he will recommend an appropriate amendment.

***O. Reg. 64/87 under the Change of Name Act, 1986**

This regulation establishes fees payable under the Act and sets out various forms to be used in applications and declarations under the Act. Form 5 is the form of application for change of name.

The authority in the statute for the form and the questions it asks are of two sorts. By s. 13(f), the Lieutenant Governor in Council may make regulations prescribing forms.

But the authority for specific questions in the form is to be found in s. 6(2), whose many clauses list in some detail the facts that an applicant for a change of name must state in a statutory declaration.

Some of the questions in the form appear to be broader than the subject-matter set out in the clauses of s. 6(2). Ministry counsel acknowledges this, and says that certain questions should be reviewed; that some are merely restatements of questions already in the form, repeated with slight changes to weed out inconsistencies; but that in all events, where a question is not specifically authorized by s. 6(2)(a)-(q), it is contemplated by the basket clause, s. 6(2)(r) ("any other information that is prescribed"), and prescribed by s. 13(f) which provides for regulations prescribing forms.

On its own, s. 6(2)(r) does not authorize the asking of any information not clearly listed in s. 6(2)(a)-(q); it is merely a descriptive statement. It requires another provision in the statute actually to authorize the question, such as: "The Lieutenant Governor in Council may make regulations prescribing information for the purpose of s. 6(2)(r)." The Pension Benefits Act offers a straightforward, indeed, stark example of how descriptive language in a statute must be supplemented by clear regulation-making authority: s. 38(1)(aa) provides for regulations "prescribing any matter referred to in this Act as prescribed by the regulations." Other statutes provide similar examples.

The Standing Statutory Instruments Committee had occasion to speak of this ten years ago in its First Report 1979 (p. 30):

The principle involved is clear: language that is descriptive only does not confer any authority upon anyone to do anything; it is unreliable and therefore is an undesirable authority upon which to base a regulation.

It is the view of the Committee that the power in s. 13(f) to make regulations prescribing forms does not have the effect of "activating" the reference in s. 6(2)(r) to "any other information that is prescribed." If it had that effect, there would be no need for specifying 17 items or classes of information in s. 6; the power to prescribe forms

would constitute a power to ask for any information. The Committee recommends that the statute be amended to authorize more clearly the information that is required, or that Form 5 be trimmed to the authority provided in the statute.

Another problem raised by Form 5 is the reference, in Part C, Question 2, to instructions. These instructions are not incorporated in the form, and Ministry counsel advises that there was no intention to incorporate them. It is a good practice, frequently followed, to incorporate instructions into the regulation. A reference in a form (that is, in a regulation) to instructions which are not incorporated appears to give the instructions the status of a regulation. The instructions may ask for information that the regulation does not ask for, and may not even have the statutory authority to ask for. The Committee recommends that instructions be incorporated in the regulations where it is the practice of Ministries to supply instructions with regulatory forms to members of the public.

MINISTRY OF THE ENVIRONMENT

STATUTORY AUTHORITY

O. Reg. 236/87 under the Environmental Protection Act

This regulation amends O. Reg. 623/85, which was reported by the Committee in its First Report 1986 because it dealt with the advertising of carbonated drinks without any authority in the statute for regulations on this topic. The present regulation likewise deals with this topic. Ministry counsel agreed that the statute would have to be amended, and this was done by S.O. 1988, c. 54.

RETROSPECTIVITY

O. Reg. 20/87 under the Environmental Assessment Act

O. Reg. 21/87 under the Environmental Assessment Act

These regulations, filed January 21, 1987, embody exemption orders allowing Ontario Hydro to carry out certain activities. Each order states: "This exemption extends the existing exemption, which would otherwise expire on December 31, 1986 . . ." The regulations are, therefore, retrospective.

Ministry counsel advises that these exemptions do not concern activities carried on in January, and so there was no reliance on the exemptions between the expiry of the old ones on December 31, 1986 and the filing of the regulations containing their replacements on January 21.

This does not alter the Committee's view that the regulations in question are retrospective; and the Ministry has undertaken to amend the wording so that it will no longer suggest a retroactive extension of the predecessor exemption.

MINISTRY OF FINANCIAL INSTITUTIONS

STATUTORY AUTHORITY

***O. Reg. 345/87 under the Securities Act**

This regulation makes substantial additions to Regulation 910, R.R.O. 1980. Among the additions made by s. 13 is Part XII, dealing with conflict of interest in underwriting, trading or recommending securities, and in related activities. Certain activities are forbidden when a registered member of the securities industry would have a conflict of interest; some of these activities are permitted, however, provided that the registrant makes certain filings with the Ontario Securities Commission or certain disclosures to the customer. The filing and disclosure requirements appear to be authorized by paragraph 8 of s. 139 of the statute which provides for regulations "governing the furnishing of information to the public or to the Commission . . ." The basic prohibitions in Part XII, however, do not appear to the Committee to be authorized by the statute.

The Ontario Securities Commission has advised that paragraphs 5 and 6 of s. 138 constitute the required authority. These provisions, however, appear to deal with applications and terms and conditions for registration; renewals and expiration of registration; and the classifying of registrants into categories. They do not appear to be intended to authorize regulations restricting activities of a dealer, underwriter or trader registered with the Commission when it is associated with another registrant connected with the security being offered or recommended. The policies underlying Part XII of Regulation 910 are, of course, not being questioned. The provisions should be clearly authorized by the statute, or, as is the case with insider trading rules, be contained in the statute itself.

MINISTRY OF HEALTH

STATUTORY AUTHORITY

*O. Reg. 406/87 under the Homes for Special Care Act

This regulation makes provisions for payments for "care and maintenance" with respect to residents of homes approved under s. 4 of the Act, and homes licensed under s. 5. The Act provides for regulations prescribing "classes of grants" to s. 4 homes, and amounts to be paid for "care and maintenance" in s. 5 homes. The Ministry's Corporate Accounting Section advises that "grants" and payments for "care and maintenance" differ in that the "grants" are global amounts given to a residential facility, while "care and maintenance" is paid by the Ministry on behalf of specific residents and is recovered from their income. The provision in this regulation for recoverable payments with regard to s. 4 homes is therefore without authority in the statute, which provides only for regulations prescribing grants to those homes.

RETROSPECTIVITY

*O. Reg. 117/87 under the Health Protection and Promotion Act, 1983

*O. Reg. 248/87 under the Health Protection and Promotion Act, 1983

These regulations amend tables to O. Reg. 594/85 and establish dates on or after which certain animals in specified District Health Units must be immunized against rabies. The dates established precede the dates on which the regulations were filed, and the regulations are, accordingly, retrospective.

Ministry counsel advises that the regulations are "intra vires and challengeable only if officials sought to enforce the regulation retroactively . . ." The guidelines in Standing Order 90(j) apply to the regulations as they are made, and neither to their administration nor to the policies contained in the regulations or reflected in their administration. The Committee is of the view that these regulations violate the guideline against retrospectivity not clearly authorized by the statute.

***O. Reg. 597/87 under the Nursing Homes Act**

This regulation revises the amounts that may be charged an extended care resident as a co-payment for accommodation. It does so with reference to a date slightly earlier than the date on which the regulation was filed, and is thus retrospective.

MINISTRY OF HOUSING

STATUTORY AUTHORITY

***O. Reg. 10/87 under the Residential Rent Regulation Act, 1986**

***O. Reg. 234/87 under the Residential Rent Regulation Act, 1986**

O. Reg. 10/87 is made in aid of the administration of Part V of the Act, which deals with the establishment and maintenance of a residential rent registry. The duties of landlords and of the Minister with regard to the establishment of the scheme are set out in ss. 55-58 of the Act. The Minister is further obligated, by s. 69, to keep the information current; s. 69(a)-(e) specifies information to be incorporated, and s. 69(f) refers to "any other relevant change in the information recorded in the rent registry." "Relevant change" is defined in s. 15(1) of O. Reg. 10/87.

The Act makes no corresponding references to landlords' and tenants' obligations to participate in keeping the rent registry current, either in Part V, or in s. 118 of the Act whose 43 clauses list the matters concerning which the Lieutenant Governor in Council may make regulations. Nevertheless, s. 15(2) of O. Reg. 10/87 states that the "landlord or tenant shall notify the Minister in writing of any proposed relevant change to the information recorded in the rent registry." This provision is not authorized by the statute.

In reply, Ministry counsel pointed to the provisions as remade by O. Reg. 234/87 which replaced s. 15(2) with a new 15(2) and (2a). Participation by tenants is now described in permissive, not mandatory terms; but participation by landlords continues to be mandatory by and large. It remains the case that there is no authorization in the

statute for regulations concerning landlord and tenant participation in updating the registry. This is true whether the provisions are couched in mandatory or permissive terms. The Committee recommends that the Act be amended so as to allow for provisions of this sort.

MINISTRY OF LABOUR

STATUTORY AUTHORITY

O. Reg. 42/87 under the Industrial Standards Act

This regulation amends the schedule to Regulation 522, R.R.O. 1980 and includes a provision limiting the number of "learners" employed in certain clothing manufacturing firms to 20 percent of the total number of employees in the establishment. There is no authorization in the statute for a regulation establishing such a limit; Ministry counsel agrees, and the provision has been revoked by O. Reg. 642/88.

MINISTRY OF MUNICIPAL AFFAIRS

PRECISION OF LANGUAGE

*O. Reg. 92/87 under the Ontario Municipal Employees Retirement System Act

This regulation amends Regulation 724, R.R.O. 1980 so that s. 5(2) provides that employers shall pay "in any month, interest at a rate equal to 1 1/2 per cent per month plus the prime rate . . . on the amount of unpaid contributions . . . until the date the total amount due has been received . . ."

Ministry counsel advises that the Director of Pension Plans at the Ontario Municipal Employees Retirement Board says that "the intent is that the rate is to be an annual rate of prime plus 1 1/2 per cent." The wording in the regulation setting out the

interest due is ambiguous. It seems to support the charging of one and one-half per cent per month in addition to the monthly component of the prime rate; and it does not say whether the monthly component of prime is to be designed as simple or compound interest, something which is made clear, for example, on most credit card statements. The Committee recommends that the provision for interest due be drafted in clearer language.

RETROSPECTIVITY

O. Reg. 605/87 under the Municipal Boundary Negotiations Act, 1981

This regulation, filed November 9, 1987, embodies an Order in Council, made November 5, 1987, which is expressed to implement, effective October 1, 1987, an agreement between two municipal corporations whereby one absorbs the other, with corresponding vesting of annexed property and extension of by-laws to the annexed area. The agreement, dated March 25, 1987, states that the annexation is to occur on "July 1, 1987 or such later date as is provided for in the Order of the Lieutenant Governor in Council."

The regulation is retroactive in that it was filed after the date which the Order in Council named for the agreement's coming into effect. Ministry counsel writes that s. 14(a) of the statute empowers the Lieutenant Governor in Council, by Order, "to give effect to agreements of party municipalities" and that this might constitute sufficient authority for incidental aspects of such an Order, such as retrospectivity. It is the Committee's view that s. 14(a) is not clear authority for retrospectivity, as required in the guidelines. Ministry counsel goes on to say:

I agree that, whether or not an annexation order can have a retrospective effect, it would be preferable that legal uncertainty be avoided by having the annexation take effect after the date of filing of the Order. In any event, no problems were occasioned because . . . [no] privately owned land was involved.

As the Committee has already had occasion to observe in this Report, the guidelines governing its review of regulations refer to the making of the regulations and not to the history of their application after they are made.

MINISTRY OF NATURAL RESOURCES

PRECISION OF LANGUAGE

O. Reg. 629/87 under the Game and Fish Act

This regulation defines "operator of a tourist establishment" with reference to three tourist services listed in the definition. As there is neither an "and" nor an "or" between the second and third items, it is not clear whether an "operator of a tourist establishment" is a provider of any one or more of the services, or whether the term is restricted to a provider of all three. Ministry counsel has advised that "or" will be added to the definition when the regulation is next amended, and that it was always intended that the three items be alternatives.

RETROSPECTIVITY

O. Reg. 131/87 under the Crown Timber Act

This regulation fixes certain Crown dues, and the fee to be paid on the transfer of a licence. These provisions are deemed to come into effect on a date earlier than that on which the regulation was filed. The authority for regulations on Crown dues and transfer fees is s. 53(d)(i) and s. 53(f) of the Act, respectively; s. 50 of the Act authorizes retrospectivity in regulations made under the former but not under the latter provision.

Ministry counsel agrees, but observes that "the retroactive effect was never applied, and the opportunity to do so is now spent." It is the Committee's duty to note retrospectivity in regulations as made, not as applied.

MINISTRY OF REVENUE

STATUTORY AUTHORITY

***O. Reg. 396/87 under the Retail Sales Tax Act**

This regulation permits the Minister of Revenue to rebate certain sales tax paid with respect to grain storage bins bought before January 17, 1987. On that date the bins became exempt from sales tax altogether because of an amendment to the statute made in 1986.

For a period before January 17, 1987, sales tax was paid on grain storage bins, but rebated by the Minister by virtue of a regulation made under authority of s. 45(3)(i) of the Retail Sales Tax Act; s. 45(3)(i) could have been authority as well for the continuing of the rebate had it not been prematurely revoked by the 1986 amendments. The rebate provision in this regulation is, therefore, without authority in the statute.

Ministry counsel expresses the view that as the regulation was merely reenacting an earlier provision made under the authority of the now-revoked s. 45(3)(i) (with the difference that the sales for which the sales tax would be rebated were now limited to sales made before January 17, 1987), s. 14(1)(b) of the Interpretation Act had the effect of making O. Reg. 396/87 valid. The Committee is not persuaded by the Ministry's argument. S. 14(1)(b) of the Interpretation Act appears to the Committee to mean, in the present context, only that the revocation of s. 45(3)(i) in 1986 does not affect, today, the validity of any regulation made under its authority before s. 45(3)(i) was revoked.

What should have been done is to have left s. 45(3)(i) in place and to have used it as authority for O. Reg. 396/87. Alternatively, the regulation should have been made before s. 45(3)(i) was revoked.

MINISTRY OF TRANSPORTATION**RETROSPECTIVITY**

O. Reg. 709/87 under the Toronto Area Transit Operating Authority Act

This regulation is expressed to come into effect on a date earlier than the date on which it was filed, and is thus retrospective without clear authority in the statute. Ministry counsel advises that this was a case of inadvertent late filing and that no retrospective effect was intended, nor was any given to the regulation; and that every attempt will be made to ensure that this does not happen again.

APPENDIX A

Regulations Act, s. 12

APPENDIX A

REGULATIONS ACT

R.S.O. 1980, Chap. 446

12.—(1) At the commencement of each session of the Legislature a standing committee of the Assembly shall be appointed, to be known as the Standing Committee on Regulations, with authority to sit during the session.

(2) Every regulation stands permanently referred to the Standing Committee on Regulations for the purposes of subsection (3).

(3) The Standing Committee on Regulations shall examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, and shall deal with such other matters as are referred to it from time to time by the Assembly.

(4) The Standing Committee on Regulations may examine any member of the Executive Council or any public servant designated by any such member respecting any regulation made under an Act that is under his administration.

(5) The Standing Committee on Regulations shall, from time to time, report to the Assembly its observations, opinions and recommendations.

APPENDIX B

Terms of Reference: Standing Order 90(j)

Standing Orders of the Legislative Assembly of Ontario

XVII. COMMITTEES

90. Within the first 10 sitting days following the commencement of each Session in a Parliament the membership of the following standing committees shall be appointed for the duration of the Session:

- (j) Standing Committee on Regulations and Private Bills to be the Committee provided for by section 12 of the *Regulations Act*, and having the terms of reference as set out in that section, namely: to examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, but in so doing regard shall be had to the following guidelines:
 - (1) Regulations should not contain provisions initiating new policy, but should be confined to details to give effect to the policy established by the statute;
 - (2) Regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties;
 - (3) Regulations should be expressed in precise and unambiguous language;
 - (4) Regulations should not have retrospective effect unless clearly authorized by statute;
 - (5) Regulations should not exclude the jurisdiction of the courts;
 - (6) Regulations should not impose a fine, imprisonment or other penalty;
 - (7) Regulations should not shift the onus of proof of innocence to a person accused of an offence;
 - (8) Regulations should not impose anything in the way of a tax (as distinct from fixing the amount of a licence fee, or the like); and
 - (9) General powers should not be used to establish a judicial tribunal or an administrative tribunal;

and, the Committee shall from time to time report to the House its observations, opinions and recommendations as required by section 12 (3) of the *Regulations Act*, but before drawing the attention of the House to a regulation or other statutory instrument the Committee shall afford the ministry or agency concerned an opportunity to furnish orally or in writing to the Committee such explanation as the ministry or agency thinks fit. [Provisional.]

APPENDIX C

**List of Acts under whose authority
five or more regulations were filed in 1987**

APPENDIX C

List of Acts under whose authority five or more regulations were filed in 1987:

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Environmental Assessment Act	25
Environmental Protection Act	5
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Family Benefits Act	10
Farm Income Stabilization Act	8
Farm Products Marketing Act	11
Farm Products Payments Act	5
Forest Fires Prevention Act	12
Fuel Tax Act	6
Game and Fish Act	19
General Welfare Assistance Act	10
Health Disciplines Act	7
Health Insurance Act	19
Health Protection and Promotion Act, 1983	11
Highway Traffic Act	27
Homes for the Aged and Rest Homes Act	5
Land Titles Act	9
Liquor Licence Act	12
Local Roads Boards Act	6
Local Services Boards Act	9
Milk Act	7
Ministry of Colleges and Universities Act	5
Ministry of Health Act	16
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Parkway Belt Planning and Development Act	11
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**List of Ministries with the number of
regulations filed in 1987 for which each has jurisdiction**

APPENDIX D

List of Ministries and other authorities, and the number of regulations filed in 1987 for which each is responsible:

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Office of the Premier	10
Management Board of Cabinet	7
Ministry of Agriculture and Food	65
Ministry of the Attorney General	44
Ministry of Colleges and Universities	5
Ministry of Community and Social Services	41
Ministry of Consumer and Commercial Relations	57
Ministry of Culture and Communications	1
Ministry of Education	18
Ministry of Energy	7
Ministry of the Environment	32
Ministry of Financial Institutions	14
Ministry of Government Services	1
Ministry of Health	102
Ministry of Housing	38
Ministry of Industry, Trade and Technology	1
Ministry of Labour	19
Ministry of Municipal Affairs	123
Ministry of Natural Resources	42
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Ministry of Skills Development	1
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O. Reg. 64/87 under the <u>Change of Name Act, 1986</u>	11
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O. Reg. 107/87 under the <u>Ministry of Colleges and Universities Act</u>	8
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O. Reg. 490/87 under the <u>Crop Insurance Act</u>	6
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Standing Committee on Regulations and Private Bills



Second Report 1989



LEGISLATIVE ASSEMBLY
ASSEMBLÉE LÉGISLATIVE

The Honourable Hugh Edighoffer, M.P.P.
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on Regulations and Private Bills has the honour to present its Second Report for the Second Session of the Thirty-fourth Parliament and commends it to the House.

A handwritten signature in dark ink, appearing to read "Robert Callahan".

Robert Callahan, M.P.P.
Chair

Queen's Park
March, 1990

MEMBERSHIP AND STAFF OF THE COMMITTEE

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Chair of the Committee

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APPENDIX D: List of Ministries with the number of regulations filed in 1988 for which each has jurisdiction

NUMERICAL LIST OF REGULATIONS REPORTED

INTRODUCTION

Your Committee presents this Report on Regulations filed in 1988 in accordance with its permanent reference, s. 12 of the Regulations Act, R.S.O. 1980, c. 446 (reproduced as Appendix A), which provides that the Committee shall consider the scope of, and the authority for, all regulations, but not the underlying policies or legislative objectives.

The Terms of Reference of the Committee are contained in Standing Order 104(k) of the Legislative Assembly, which is reproduced as Appendix B.

STATISTICS FOR 1988

During 1988, 769 regulations were filed, and were published in 2,638 double-column pages in The Ontario Gazette. The number of pages of text is up about thirteen percent from 1987, and about eleven percent above the average for the ten years ending in 1988; the number of regulations, though up six percent from 1987, is still only 91 percent of the average for the last ten years. Figures for the years 1979-1988 are as follows:

<u>Year</u>	<u>Regulations</u>	<u>Pages</u>
1979	962	2,568
1980	1,141	2,138
1981	884	1,952
1982	837	2,021
1983	815	2,245
1984	840	3,667
1985	703	1,726
1986	763	2,946
1987	725	2,339
1988	769	2,638

The regulations were made under the authority of 157 Acts under the administration of 22 Ministries, the Office of the Premier, and Management Board of Cabinet. Two hundred of the regulations are made under 119 statutes with fewer than five regulations made under each; seventeen statutes have 5-9 regulations under each, accounting for 121 regulations; and 448 regulations are made under the 21 statutes which account for 10 or more regulations each.

In 1987, 31 percent of the Acts under which regulations were made had at least five regulations; in 1988 the figure is 24 percent.

Over two-thirds of the regulations - 548 - amend other regulations. The remaining 221 include 209 new regulations and, with some overlap, 51 which revoke one or more old regulations.

As was the case in 1987, the Planning Act, 1983 accounted for more regulations than any other Act; the number, seventy-eight, is down slightly from the previous year's total. This Act and the five Acts with the next largest numbers of regulations account for close to one-third of all regulations filed in 1988: the Highway Traffic Act (44); the Conservation Authorities Act (26); the Crop Insurance Act (Ontario) (31); the Environmental Assessment Act (28); and the Forest Fires Prevention Act (25). A complete list of Acts with five or more regulations appears as Appendix C.

Over one-half of the regulations fall under the jurisdiction of four Ministries: Municipal Affairs (129), Natural Resources (103), Health (82), and Agriculture and Food (79). The Ministry of Consumer and Commercial Relations administers more Acts under which regulations were filed in 1988 - twenty-eight - than any other Ministry. Appendix D consists of a list of Ministries and other authorities with the number of regulations administered by each.

REGULATIONS REPORTED

(a) The Guidelines Violated

After reviewing the 769 regulations filed in 1988, the Committee wrote to 15 Ministries to make inquiries about certain regulations. Twelve ministries responded at length, commenting on all but one of the regulations questioned. Three did little more than acknowledge the inquiries. The responses, and information and advice generously made available by the Registrar of Regulations, are frequently reflected in this report, in which the Committee comments upon 29 regulations. The comments are arranged, by Ministry, and within those headings, by the guideline violated.

The three guidelines the Committee found to be violated are:

- **Regulations should be in strict accord with the statute conferring of power ("Statutory Authority"):** the Committee reports 13 regulations which are made (i) on topics not authorized in the statute, or (ii) by a maker other than the one specified in the statute for the particular regulation.
- **Regulations should be expressed in precise and unambiguous language ("Precision of Language"):** eight regulations are reported; typographical errors that do not divert anyone from the true meaning of the regulations do not, in the Committee's view, violate this guideline.
- **Regulations should not have retrospective effect unless clearly authorized by statute ("Retrospectivity"):** the Committee reports eight regulations which are expressed to come into effect on a date earlier than that on which the regulation was filed.

(b) The Regulations

In their responses to the Committee's inquiries about the regulations reported in this section, the Ministries in some cases agreed without reservation that the violation in fact took place, or expressed the opinion that the violation was mitigated by certain circumstances. In other cases, the Ministry disagreed in whole or in part or made no specific comments on the regulation in question. **These latter responses are signalled by an asterisk.**

It should be noted that a reference to a regulation frequently relates only to a specific provision in the regulation in question.

MINISTRY OF AGRICULTURE AND FOOD

STATUTORY AUTHORITY

*O. Reg. 721/88 under the Bees Act, 1987

This regulation is described in The Ontario Gazette as having been made under the Bees Act, which was no longer in force when the regulation was made; it appears, therefore, to have been made under the Bees Act, 1987. In s. 5 it requires that every beekeeper post within the apiary a sign with the beekeeper's name and address. The Ministry advises that the provision relied upon as authority is s. 8(2) of the present Act, which reads:

Every beekeeper shall identify the apiary or apiaries of which he or she is the owner by posting, in the places and in the manner prescribed by the regulations made under this Act, his or her name and address.

This subsection is merely descriptive with regard to the required regulation in that it refers to "regulations made under this Act," but provides no authority for making one. The statute requires a provision authorizing regulations for the purpose of s. 8(2). A passage from the Committee's First Report 1979 (p. 30) continues to be apposite:

The principle involved is clear: language that is descriptive only does not confer any authority upon anyone to do anything; it is unreliable and therefore is an undesirable authority upon which to base a regulation.

PRECISION OF LANGUAGE

O. Reg. 434/88 under the Crop Insurance Act (Ontario)

O. Reg. 605/88 under the Crop Insurance Act (Ontario)

O. Reg. 606/88 under the Crop Insurance Act (Ontario)

O. Reg. 607/88 under the Crop Insurance Act (Ontario)

These regulations deem the insured to have assented to certain things unless he or she notifies the Crop Insurance Commission "within ten days after the mailing or delivery of the notice." The wording varies slightly from regulation to regulation. In its First Report 1989, the Committee noted (p. 6):

The phrase "within ten days after [or "from"] the mailing or delivery" does not fix with enough clarity the time in which the insured person can preserve his or her interests under the insurance policy. Does "mailing" mean "putting in the mail," or "delivery to the premises of the insured"? The phrase "mailing or delivery" might suggest the latter because that would give "mailing" a meaning analogous to "delivery". But "delivery" might be deemed to take place when a crop insurance agency telephones an insured to say that there is a letter to be picked up. Given the significant financial interests involved, these provisions concerning notice should be drafted having regard to the tradition of strictness and clarity in the method and timing of communicating acceptances in contract law, and time-sensitive notices in civil proceedings.

The Ministry advises that the section will be reworded as each plan comes up for amendment, and notes that the Crop Insurance Act (Ontario) may be amended so that plans will no longer be made or altered by regulation.

MINISTRY OF COLLEGES AND UNIVERSITIES

STATUTORY AUTHORITY

O. Reg. 106/88 under the Ministry of Colleges and Universities Act

O. Reg. 107/88 under the Ministry of Colleges and Universities Act

Ontario Regulation 106/88, made by the Minister, deals in part with loans; s. 9(2) of the statute provides that regulations on that topic shall be made by the Lieutenant Governor in Council. O. Reg. 107/88, published in The Ontario Gazette as having been made by the Lieutenant Governor in Council, is on the subject of grants, and should have been made, under s. 7(a) of the statute, by the Minister.

The Ministry observes that it might be more convenient to have all the regulation-making powers under the Ministry of Colleges and Universities Act vested in the Lieutenant Governor in Council. In the meantime, O. Reg. 107/88 would be remade. The Ministry's intention with regard to O. Reg. 106/88 was not made clear.

MINISTRY OF COMMUNITY AND SOCIAL SERVICES

STATUTORY AUTHORITY

***O. Reg. 219/88 under the Child and Family Services Act, 1984**

This regulation amends O. Reg. 550/85. Section 6 deals with counselling for parents considering relinquishing a child for adoption (Part VII of the statute) but s. 203 of the statute (concerning regulations for Part VII) offers no authority for regulations on this topic. Similarly, s. 22 of O. Reg. 219/88 amends Form 29 which deals with voluntary access to services (Part II of the statute), but there is no authority for the making of forms for Part II in s. 198 of the statute.

MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS

STATUTORY AUTHORITY

***O. Reg. 95/88 under the Travel Industry Act**

This regulation amends Reg. 938, R.R.O. 1980. Section 18 now requires certain information to be given on the receipt for money received by a travel agent from a customer; and ss. 35 and 36 (since amended in ways not material here) deal with travel wholesalers' obligations to make certain disclosures to travel agents and to offer refunds in case of changes in the tour packages being marketed. There is no authority for regulations on these topics in the statute.

The Ministry cites as authority s. 27(b), (k) and (m) of the Travel Industry Act. These paragraphs provide for regulations governing registration and renewal of registration, and concerning books, accounts and records, and forms under the Act, and their use. These provisions do not appear to the Committee to provide the authority needed. The Ministry notes that the policy behind the provisions is protection of the public; the Committee is not questioning the policy - indeed, it has no mandate to do so.

***O. Reg. 542/88 under the Wine Content Act**

This regulation requires wineries to record their acquisitions of Ontario grapes and to retain the records for 24 months. It appears to the Committee that there is no authority for these provisions in the statute under which they are made.

The Ministry advises that the authority relied upon is s. 3(1)(f) of the statute which provides for regulations prescribing documents to be submitted to the L.C.B.O., coupled with a Management Board policy which states that where regulations require that a record be made or maintained, there should be a specified retention period. The Committee recommends that where it is desired to give effect to such policies, the appropriate authority be added to the relevant statutes. It should also be noted that the regulation deals with retention of records by their makers, and the authority relied upon concerns records to be submitted to the L.C.B.O.

MINISTRY OF EDUCATION

STATUTORY AUTHORITY

***O. Reg. 233/88 under the Education Act**

Section 4 of this regulation remakes s. 6 of Regulation 262, R.R.O. 1980. It states that school boards may provide for emergency drills. The Ministry advises that the authority relied upon are paragraphs 1 and 24 of s. 10(1) of the Act. These provide for regulations

1. for the establishment, organization, administration and government [of schools or classes];
- . . .
24. prescribing the powers, duties . . . of, teachers, supervisors, directors, supervisory officers, heads of departments, principals, superintendents, residence counsellors, school attendance counsellors and other officials.

It does not appear to the Committee that paragraph 24 provides for regulations concerning school boards; and it is of the opinion that if paragraph 1 is being relied upon, the regulation being discussed contains an improper delegation to school boards of the authority described in that paragraph. Therefore the provision concerning boards and emergency drills appears to be without authority in the statute.

PRECISION OF LANGUAGE

O. Reg. 160/88 under the Education Act

In s. 11(2) of this regulation there is provision for a grant equal to "the greater of the amount calculated as follows." These words are followed by the calculation for one amount. It is unclear whether text describing the calculation of a second amount is missing, or whether the words "greater of the" are superfluous. The Ministry advises that the regulation will be amended to remove the superfluous words.

MINISTRY OF HEALTH

STATUTORY AUTHORITY

*O. Reg. 575/88 under the Homes for Special Care Act

This regulation repeats a problem which appeared in O. Reg. 406/87 under the same Act, and which was reported in the Committee's First Report 1989 (p. 16):

This regulation makes provisions for payments for "care and maintenance" with respect to residents of homes approved under s. 4 of the Act, and homes licenced under s. 5. The Act provides for regulations prescribing "classes of grants" to s. 4 homes, and

amounts to be paid for "care and maintenance" in s. 5 homes. The Ministry's Corporate Accounting Section advises that "grants" and payments for "care and maintenance" differ in that the "grants" are global amounts given to a residential facility, while "care and maintenance" is paid by the Ministry on behalf of specific residents and is recovered from their income. The provision in this regulation for recoverable payments with regard to s. 4 homes is therefore without authority in the statute, which provides only for regulations prescribing grants to those homes.

PRECISION OF LANGUAGE

*O. Reg. 136/88 under the Psychologists Registration Act

O. Reg. 743/88 under the Prescription Drug Cost Regulation Act, 1986

The definition of "professional misconduct" in O. Reg. 136/88 includes "failure to maintain a record for each client that does not contain . . . [here, nine types of information are listed]." It appears that the reference should be to "a record for each client containing [the nine items]."

Ontario Regulation 743/88 amends a schedule to an earlier regulation "by adding thereto the following items [which are then listed]," without revoking the items they replace. The Ministry has advised that clearer phrasing has been used for all subsequent amendments.

MINISTRY OF HOUSING

STATUTORY AUTHORITY

O. Reg. 588/88 under the Ontario Water Resources Act

This regulation, which amends O. Reg. 815/84, was made by the Lieutenant Governor in Council; the authority in the statute, s. 44(2)(b) as remade by S.O. 1988, c. 54, provides for regulations to be made by the Minister. The Ministry advises that the matter will be dealt with when amendments are made to O. Reg. 815/84.

MINISTRY OF INDUSTRY, TRADE AND TECHNOLOGY

RETROSPECTIVITY

O. Reg. 147/88 under the Technology Centres Act, 1982

O. Reg. 148/88 under the Technology Centres Act, 1982

O. Reg. 149/88 under the Technology Centres Act, 1982

O. Reg. 150/88 under the Technology Centres Act, 1982

O. Reg. 151/88 under the Technology Centres Act, 1982

Each of these regulations, filed March 21, 1988, purports to extend the operational period of a technology centre established under s. 3(1)(a) of the statute. The operational periods of the centres were prescribed by the Lieutenant Governor in Council under s. 3(2). These regulations were made under s. 3(3) of the statute which allows for regulations extending operational periods. There is no provision in the Act, however, for regulations to have retroactive effect, as these regulations must, by necessary implication, have been meant to have (as the original operational periods had expired at various times in 1987). Absent a timely extension, the centres should have been wound up in accordance with s. 3(4) of the statute.

The Ministry acknowledges the error and says that by the end of 1989 the last two technology centres will cease to operate.

MINISTRY OF MUNICIPAL AFFAIRS

STATUTORY AUTHORITY

*O. Reg. 623/88 under the Municipal Extra-Territorial Tax Act, 1988

This regulation was published in The Ontario Gazette as having been made by the Lieutenant Governor in Council. It should have been made by the Minister subject to the approval of the Lieutenant Governor in Council in accordance with s. 2(1) of the statute.

RETROSPECTIVITY

*O. Reg. 557/88 under the Municipal Boundary Negotiations Act, 1981

*O. Reg. 625/88 under the Municipal Boundary Negotiations Act, 1981

*O. Reg. 626/88 under the Municipal Boundary Negotiations Act, 1981

These three regulations are orders in council which put into effect agreements made by three sets of municipal corporations. For the purpose of the 1988 municipal elections, the orders in council deem the annexations (one of the subject-matters of the agreements) to come into effect on September 6, 1988. (The other consequences of the agreements were not to take effect until 1989.)

None of the regulations was filed by September 6; indeed, the latter two were not made until after that date. There is no clear authority in the statute for retroactive effect of regulations, and, accordingly these regulations violate the guideline against retrospectivity.

MINISTRY OF NATURAL RESOURCES

STATUTORY AUTHORITY

*O. Reg. 726/88 under the Surveyors Act, 1987

In accordance with s. 7(1) of the statute this regulation should have been made by the Council of the Association of Ontario Land Surveyors. In fact the document filed with the Registrar of Regulations as O. Reg. 726/88 is Order in Council 492/88 bearing the signatures of the Lieutenant Governor, the Minister of Natural Resources, and the Chairman of Cabinet.

The Ministry advises that it acted, at the Council's request, as a liaison between the Council and the Registrar of Regulations, through the Surveyor General, who is both an official in the Ministry and a member of the Council. It is the Committee's view that this does not alter the nature of the instrument making the regulation, and that it follows that the regulation was made by the wrong authority.

PRECISION OF LANGUAGE

O. Reg. 420/88 under the Provincial Offences Act

This regulation, though under the jurisdiction of the Ministry of the Attorney General, is noted here because it incorporates several incorrect references to regulations under the Game and Fish Act, by way of establishing the proper words to be used in describing an offence on a certificate, notice or summons under the Provincial Offences Act. The Game and Fish Act comes under the jurisdiction of the Ministry of Natural Resources. The offence of not keeping a firearm "unloaded and unencased" in certain circumstances, should read "unloaded and encased"; and a reference to an item in s. 10a(1) of Regulation 428, R.R.O. 1980 is in error, as that subsection had already been revoked.

The Ministry advises that the errors would be remedied.

MINISTRY OF REVENUE

STATUTORY AUTHORITY

*O. Reg. 391/88 under the Income Tax Act

This regulation, made by the Lieutenant Governor in Council, provides, in s. 4:

For the purposes of clause 7(1)(e) of the Act, the prescribed manner [of designating a principal residence] shall be by completing and filing Form 1, or . . . Form 2 . . .

The forms are published with the regulation. The statute provides, in paragraph 20 of s. 1(1) that

"prescribed", in the case of a form . . . means prescribed by order of the Provincial Minister, and, in any other case, means prescribed by regulation.

It appears to the Committee that this regulation purports to prescribe two forms without authority in the statute to do so.

The Ministry's position is that the regulation is merely illustrating (with forms which in fact are part of Revenue Canada's tax return package) the method of designating a principal residence. The method is being prescribed in the regulation under the authority of s. 29(1)(a), and not the forms themselves.

It is the view of the Committee that where illustrations, forms or diagrams are published with a regulation, they are being clothed with the regulation's authority and should derive that authority, as should the rest of the regulation, from an empowering statute.

***O. Reg. 475/88 under the Tobacco Tax Act**

This regulation repeals certain provisions concerning refunds in Regulation 934, R.R.O. 1980. It is made, as were the provisions it repeals, by the Lieutenant Governor in Council. Until 1981, s. 28(1)(1) of the Tobacco Tax Act provided that regulations concerning refunds were to be made by the Lieutenant Governor in Council. However s. 28(2)(d) as made by S.O. 1981, c. 4, s. 6(2) provides that such regulations are now to be made by the Minister.

The Interpretation Act provides:

27. In every Act, unless the contrary intention appears,

...

(g) where power is conferred to make . . . regulations . . . , it includes power to alter or revoke the same from time to time and make others.

The Committee is of the view that it follows from this that the repeal should have been carried out by the authority who has the power to make the regulation, namely the Minister, and not the Lieutenant Governor in Council who no longer has regulation-making powers on the topic of refunds under the Tobacco Tax Act.

APPENDIX A

Regulations Act, s. 12

APPENDIX A

REGULATIONS ACT

R.S.O. 1980, Chap. 446

12.—(1) At the commencement of each session of the Legislature a standing committee of the Assembly shall be appointed, to be known as the Standing Committee on Regulations, with authority to sit during the session.

(2) Every regulation stands permanently referred to the Standing Committee on Regulations for the purposes of subsection (3).

(3) The Standing Committee on Regulations shall examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, and shall deal with such other matters as are referred to it from time to time by the Assembly.

(4) The Standing Committee on Regulations may examine any member of the Executive Council or any public servant designated by any such member respecting any regulation made under an Act that is under his administration.

(5) The Standing Committee on Regulations shall, from time to time, report to the Assembly its observations, opinions and recommendations.

APPENDIX B

Terms of Reference: Standing Order 104(k)

APPENDIX B

Standing Orders of the Legislative Assembly of Ontario

XX. COMMITTEES

104. Within the first 10 Sessional days following the commencement of each Session in a Parliament the membership of the following standing committees shall be appointed for the duration of the Session:

(k) Standing Committee on Regulations and Private Bills to be the . . . Committee provided for by section 12 of the *Regulations Act*, and having the terms of reference as set out in that section, namely: to examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, but in so doing regard shall be had to the following guidelines:

- (i) Regulations should not contain provisions initiating new policy, but should be confined to details to give effect to the policy established by the statute;
- (ii) Regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties;
- (iii) Regulations should be expressed in precise and unambiguous language;
- (iv) Regulations should not have retrospective effect unless clearly authorized by statute;
- (v) Regulations should not exclude the jurisdiction of the courts;
- (vi) Regulations should not impose a fine, imprisonment or other penalty;
- (vii) Regulations should not shift the onus of proof of innocence to a person accused of an offence;
- (viii) Regulations should not impose anything in the way of a tax (as distinct from fixing the amount of a licence fee, or the like); and
- (ix) General powers should not be used to establish a judicial tribunal or an administrative tribunal;

and, the Committee shall from time to time report to the House its observations, opinions and recommendations as required by section 12(3) of the *Regulations Act*, but before drawing the attention of the House to a regulation or other statutory instrument the Committee shall afford the ministry or agency concerned an opportunity to furnish orally or in writing to the Committee such explanation as the ministry or agency thinks fit.

APPENDIX C

**List of Acts under whose authority
five or more regulations were filed in 1988**

APPENDIX C

List of Acts under whose authority five or more regulations were filed in 1988:

Administration of Justice Act	6
Assessment Act	7
Charitable Institutions Act	5
Conservation Authorities Act	39
Crop Insurance Act (Ontario)	31
Education Act	13
Environmental Assessment Act	28
Environmental Protection Act	12
Family Benefits Act	7
Farm Products Marketing Act	18
Forest Fires Prevention Act	25
Fuel Tax Act, 1981	6
Game and Fish Act	18
General Welfare Assistance Act	8
Health Disciplines Act	9
Health Insurance Act	16
Health Protection and Promotion Act, 1983	9
Highway Traffic Act	44
Homes for the Aged and Rest Homes Act	5
Liquor Licence Act	14
Local Roads Boards Act	7
Local Services Boards Act	11
Milk Act	10
Municipal Boundary Negotiations Act, 1981	12
Municipal Elections Act	9
Nursing Homes Act	6
Occupational Health and Safety Act	8
Ontario Drug Benefit Act, 1986	16

Parkway Belt Planning and Development Act	15
Pension Benefits Act, 1987	7
Pesticides Act	5
Petroleum Resources Act	15
Planning Act, 1983	78
Prescription Drug Cost Regulation Act, 1986	8
Provincial Offences Act	13
Residential Rent Regulation Act, 1986	10
Technology Centres Act, 1982	10
Tobacco Tax Act	9

APPENDIX D

**List of Ministries with the number of
regulations filed in 1988 for which each has jurisdiction**

APPENDIX D

List of Ministries and other authorities, and the number of regulations filed in 1988 for which each is responsible:

Office of the Premier	1
Management Board of Cabinet	2
Ministry of Agriculture and Food	79
Ministry of the Attorney General	41
Ministry of Colleges and Universities	5
Ministry of Community and Social Services	29
Ministry of Consumer and Commercial Relations	55
Ministry of Education	17
Ministry of Energy	5
Ministry of the Environment	46
Ministry of Financial Institutions	20
Ministry of Government Services	1
Ministry of Health	82
Ministry of Housing	15
Ministry of Industry, Trade and Technology	11
Ministry of Labour	12
Ministry of Municipal Affairs	129
Ministry of Natural Resources	103
Ministry of Northern Development and Mines	11
Ministry of Revenue	40
Ministry of Skills Development	1
Ministry of the Solicitor General	3
Ministry of Tourism and Recreation	5
Ministry of Transportation	56

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O. Reg. 95/88 under the <u>Travel Industry Act</u>	6
O. Reg. 106/88 under the <u>Ministry of Colleges and Universities Act</u>	5
O. Reg. 107/88 under the <u>Ministry of Colleges and Universities Act</u>	5
O. Reg. 136/88 under the <u>Psychologists Registration Act</u>	9
O. Reg. 147/88 under the <u>Technology Centres Act, 1982</u>	10
O. Reg. 148/88 under the <u>Technology Centres Act, 1982</u>	10
O. Reg. 149/88 under the <u>Technology Centres Act, 1982</u>	10
O. Reg. 150/88 under the <u>Technology Centres Act, 1982</u>	10
O. Reg. 151/88 under the <u>Technology Centres Act, 1982</u>	10
O. Reg. 160/88 under the <u>Education Act</u>	8
O. Reg. 219/88 under the <u>Child and Family Services Act, 1984</u>	6
O. Reg. 233/88 under the <u>Education Act</u>	7
O. Reg. 391/88 under the <u>Income Tax Act</u>	12
O. Reg. 420/88 under the <u>Provincial Offences Act</u>	12
O. Reg. 434/88 under the <u>Crop Insurance Act (Ontario)</u>	4

O. Reg. 475/88 under the <u>Tobacco Tax Act</u>	13
O. Reg. 542/88 under the <u>Wine Content Act</u>	6
O. Reg. 557/88 under the <u>Municipal Boundary Negotiations Act, 1981</u>	11
O. Reg. 575/88 under the <u>Homes for Special Care Act</u>	8
O. Reg. 588/88 under the <u>Ontario Water Resources Act</u>	9
O. Reg. 605/88 under the <u>Crop Insurance Act (Ontario)</u>	4
O. Reg. 606/88 under the <u>Crop Insurance Act (Ontario)</u>	4
O. Reg. 607/88 under the <u>Crop Insurance Act (Ontario)</u>	4
O. Reg. 623/88 under the <u>Municipal Extra-Territorial Tax Act, 1988</u>	10
O. Reg. 625/88 under the <u>Municipal Boundary Negotiations Act, 1981</u>	11
O. Reg. 626/88 under the <u>Municipal Boundary Negotiations Act, 1981</u>	11
O. Reg. 721/88 under the <u>Bees Act, 1987</u>	4
O. Reg. 726/88 under the <u>Surveyors Act, 1987</u>	11
O. Reg. 743/88 under the <u>Prescription Drug Cost Regulation Act, 1986</u>	9

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